LEAGUE OF NATIONS

BARCELONA CONFERENCE

VERBATIM RECORDS AND TEXTS

OF THE

RECOMMENDATIONS

RELATIVE TO THE

INTERNATIONAL REGIME

OF

RAILWAYS

AND OF THE

RECOMMENDATIONS

RELATIVE TO

PORTS PLACED UNDER AN INTERNATIONAL REGIME

GENEVA 1921

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PART I

STATEMENT BY SIR FRANCIS DENT

(VICE-PRESIDENT OF THE CONFERENCE)

ON THE

QUESTION OF RAILWAYS

AND

GENERAL DISCUSSION IN CONFERENCE

FOURTEENTH MEETING OF THE CONFERENCE

(Wednesday, March 30th, 1921, at 11 a.m.)

GENERAL STATEMENT ON THE QUESTION OF RAILWAYS — GENERAL DISCUSSION

The meeting opened with M. Hanotaux, President, in the Chair.

GENERAL STATEMENT ON THE QUESTION OF RAILWAYS

The PRESIDENT (speaking in French). — The first item on our agenda is the general discussion of the Draft Convention on Railways (1).

I call on Sir Francis Dent to make a statement to the Conference on this question.

Sir Francis DENT (Vice-President). — Mr. President and Gentlemen, I appreciate very highly the honour which the Council of the League of Nations has done me in selecting me as one of the Vice-Presidents of this Conference. Of that honour I feel all unworthy. I have none of the qualifications of the distinguished statesmen who are your other Vice-Presidents. I can only suppose that I was selected because, as Chairman of the Commission for the Repartition of the Rolling-Stock of the Former Austro-Hungarian Monarchy, I have for the last eighteen months been in contact with a railway situation which is an absolute negation of the aims of the Covenant. Let me hasten to add that this railway situation arises through no fault of the railway administrations concerned. All the administrations with which I deal have, I am sure, the same high ideals as those which animate this Conference; but circumstances have hitherto been too strong for them. M. Perietzeano, of the Roumanian Delegation, has described the origin of those difficulties in his eloquent and lucid remarks at the meeting of March 14th (2). It was, therefore, with the greatest pleasure that I heard him express the decision of the Roumanian Delegation to base its actions upon the spirit of the Covenant.

The wish of the nations which have formed the League, and, I am sure, of the other nations represented here, seems clear and unmistakable. Is it not that, just as the nation which has great military strength will no longer use that strength to bend others to its will, so the nation which possesses extensive control over transport will use that power not only fairly but generously? It will not always be easy, I know, for Governments to persuade their own nationals of the justice of the policy defined in the Draft Convention. In the island which is my own mother-country the railways are private undertakings, and it has been difficult. How much greater will be the difficulty in that ever-increasing number of States which are the owners of their railway systems? In those States it might well seem to be good policy to lose money on the railways if the total wealth of the inhabitants is thereby increased. They will thus often be urged so to use their railway systems as to prejudice nationals of other countries and to obtain a competitive advantage for their own traders. All States have long seen the necessity of not allowing discrimination between individuals in respect of railway rates and charges. Now they are invited to take a further resolution; to treat other nations in the same broad spirit.

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(1) The text which serves as the basis of discussion is that of Section IV of Part V of this volume : *Draft Convention on the International Regime of Railways.*

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit,* page 19.

The war has realised the ambitions of some nations to attain freedom, of others to make their governments more democratic. To all it is important that the freedom so hardly won should not be strangled by economic disaster. Good intercommunication will go far to avert such a disaster.

I must not presume to detain the Conference. I will only say that to me it seems that this Draft Convention need not occupy the Conference for long. The principles of the Transit Convention have been approved. This Convention is but the expression of the wish of the nations to adopt a similar code for the development of international railway traffic.

For many years there has been in force in Europe a Convention, the principles of which appear to me to satisfy the aspirations of the Covenant; I allude to the Bern Convention. It is true that that Convention, owing to the laws in force in Great Britain, and also to geographical considerations, cannot be literally adhered to by the British, but they can adhere to its general intentions. There may be other States in Europe who are faced with the same difficulties. In Europe, with the Bern Convention before us, our task is made easier. In other continents there are no doubt similar Conventions which can also guide us. Those States which are parties to these existing Conventions may well ask what need there is of such a Convention as this. May I attempt to give the answer? The existing Conventions are Conventions between groups of States. By accepting this Railway Convention, all the nations join in a general Convention extending to international railway traffic those principles which have been approved in the Transit Convention. By agreeing to this Railway Convention they also make it possible for disputes arising out of international traffic to be submitted to the methods of conciliation and the jurisdiction provided by the League of Nations.

Finally, we must take into account the legitimate desire of every nation to foster its own industries. All we have to do is to be sure that in achieving this legitimate object, international traffic is not unfairly hindered.

The PRESIDENT (speaking in French). — The restrained yet masterly statement which Sir Francis Dent has made provides both the Conference and the Committee which will deal with railway questions with an excellent programme for their work. It is obvious that, although not perhaps a question of principle—since it has already formed the subject of Regulations and Conventions—the study of the regime of railways will be of the utmost importance from the point of view of the general situation of transport, and will have a very great influence on public opinion and private interests. This is perhaps the sphere in which the work of our Conference will attract the greatest amount of attention, and if we can soon announce to the whole world, as a result of our work, the creation of the Advisory and Technical Committee, with its special qualifications where railways are concerned, I think we shall indeed be able to congratulate ourselves.

Sir Francis Dent has laid down the principles with so much commonsense, clearness, and precision, that I would beg the Conference never to lose sight of them. I would venture to add that the accuracy of the information given by Sir Francis Dent, and the simple form in which it is stated, will undoubtedly enable us to hasten the work of the Conference in this particular matter.

GENERAL DISCUSSION

The general discussion will now begin.

I call upon M. Étienne, who will speak on behalf of the Central Office for International Transport.

M. ÉTIENNE (Director of the Central Office for International Transport; speaking in French). — Allow me to tender our eminent President my sincere thanks for having invited the Central Office of International Rail Transport to take part in this important Conference. In the course of the discussion on freedom of transit, allusion has been made on various occasions to the Bern Convention. Accordingly, with the President's permission, I decided to wait for the discussion to be resumed before giving a brief

account of this Convention, explaining its chief points and adding a few words on the new draft provisions to regulate the transport of certain articles under certain conditions, and also referring to the new Draft Convention on the transport of passengers and baggage. Some information is also given regarding the technical unity of railways as Article 3 of the Draft Convention deals with rolling-stock.

The study of the question of the international transport of goods by rail dates from some fifty years ago. In June, 1874, two Swiss jurists, de Seigneux at Geneva and Dr. Christ at Basle, who, being at the two entrance-gates into Switzerland, were in a good position to observe the difficulties which in those days hindered the passage of goods from one country to another, took advantage of the discussion in the Swiss Federal Chambers of a draft law regarding traffic by rail, to submit to those Chambers a petition for the convening of an International Conference, whose task it would be to regulate, in a uniform manner, certain especially important sections of legislation in regard to rail traffic. This petition, which was accompanied by a detailed memorandum, had a most favourable reception; it was transmitted to the Swiss Federal Council, which sent it to the Governments of four neighbouring countries. The latter requested Switzerland to draw up the preliminary draft of a convention to regulate international rail transport. This draft was examined in 1876 by a committee of experts, which modified it in many respects; it was then communicated in the same year not only to Germany, Austria-Hungary, France and Italy, but also to Belgium, Luxemburg, the Netherlands and Russia. All these States agreed to take part in the proposed conference, though Denmark, Spain and Portugal, who were also invited, declined to participate.

The draft of the proposed convention was restricted to practical objects,—to the real requirements of international traffic in *goods*, with through way-bills only. In all cases where uniform arrangements could not be arrived at, the draft left the matter to be dealt with by the legislation of the country concerned; it included 38 articles, divided into six chapters, followed by a final clause. Germany also prepared a draft, which consisted chiefly of amendments to the Swiss draft. In principle, the object was to draw up, in the first instance, permanent provisions which should be submitted for ratification; and, in the second place, arrangements of a more or less temporary character, which would only require the approval of the executive authority; in this way account might be taken of the stages of progress achieved in the operation of railways as well as in science and industry.

The first Conference, which took place at Bern in 1878, was entrusted with the difficult task of laying down the bases of the Convention. At this Conference there were represented Germany, Austria-Hungary, Belgium, France, Russia and Switzerland. The two drafts were discussed article by article; the subsequent discussions resulted in a draft *International Treaty* with a code of *Regulations* which formed the basis of later drafts; this was followed by a draft *Additional Treaty* regarding the International Commission which it was desired to establish, and which was the first step towards the creation of the Central Office.

The second Conference, held in 1881, was entrusted with the revision of the draft of 1878, and of the series of proposals formulated by the various States which had participated in it. Certain improvements were introduced into the text; the *International Commission* for which provision had been made was converted, at the suggestion of France, into a *Central Office*. Next, Annex 1, which detailed the goods to be transported under certain conditions, and the form for international way-bills, was improved and completed; the questions of revisional conferences and of the duration and the coming into force of the Convention, were also settled.

The third Conference, held in 1886, continued the work of its two predecessors, and discussed proposals for improvement, the list of railways, and the Final Protocol prepared with a view to the Diplomatic Conference. The Final Protocol was signed by all the delegates, was accepted by all the Governments, and, after having received diplomatic sanction, was ratified; the final text of the *Convention of October 14th, 1890*, which was the result of the deliberations of this Conference, came into force on January 1st, 1893, at which time also the Central Office was entering upon its duties. The signatory States were those which took part in the first Conference.

The question of admitting new States had arisen even before the coming into force

of the Convention; as the procedure to be followed was not laid down by any of the terms of the Convention, a Diplomatic Conference was convened at Bern in the summer of 1893, in order to remedy this deficiency. It was impossible to arrange for free admission, in view of the reciprocal obligations which the contracting States undertook, both for themselves and in respect of the railways. The deliberations of the Conference resulted in the *Additional Declaration of September 20th, 1893*, which laid down the procedure—a very simple one—for admission to the Convention. Since 1893 Denmark, Roumania, Sweden, Serbia, Bulgaria and Norway have successively joined the Union of International Rail Transport. A request for admission by the Polish Republic has recently been transmitted to the contracting States; other States will shortly adhere to the Convention.

As regards articles the transport of which is allowed under certain conditions,—a list of which is shown in Annex 1 of the Convention—the Central Office observed, as soon as it began its work, that the list and the conditions for transport and packing were already some years old, and needed to be revised in order to satisfy to the widest possible extent the requirements of traffic, commerce and industry.

As early as 1893 the various schemes submitted were examined by a technical conference, convened for this purpose at Bern. The result of its deliberations was embodied in a Final Procès-Verbal with two annexes,—a *Revised Draft of Annex 1* (*Articles the transport of which is allowed under certain conditions*) and *Draft Annex 1* (a) (*valuables, artistic works and funerals*). This was submitted to the Swiss Federal Council for transmission to the contracting States with a view to its being transformed into an actual Convention; it became the *Additional Agreement of July 16th, 1895*.

After this Conference, the Central Office undertook preparatory investigations for the first conference to revise the international convention; this was held in Paris in 1896 at the invitation of the French Government. With this object the Central Office prepared a list of questions to be dealt with. This list was based on the proposals and observations of the contracting State. The questions were classed according to the various articles of the Convention, and served as a basis for the deliberations of the Conference. The same States took part in the Conference as in that of 1878. The main objects were to improve the text of October 14th, 1890, to bring the versions in both languages into accord, and to profit by the experience gained during the first three years in which the Convention had been in force. The fundamental principles of that Convention, however, were not modified. The list of amendments effected was entered in a Final Procès-Verbal, which became the *Additional Convention of June 18th, 1898*; the latter, when ratified, was incorporated in the original Convention, and a new text came into force on October 10th, 1901.

Nine years passed before the summoning of the next Conference, which was known as the Second Provisional Conference. This Conference met at Bern in 1905. It made very few alterations in the text of the Convention; a series of improvements was introduced into Annex 1 in order to bring it into a line with recent progress. According to the usual procedure, the results of the deliberations of this Conference, in which Denmark and Roumania as well as the signatory States took part, were entered in a Final Procès-Verbal, which was subsequently transformed into the *Additional Convention of September 19th, 1906*. The new text of the Convention of October 14th, 1890, thus modified, has been in force since December 22nd, 1906.

Even at that time the Central Office had considered the question of revising Annex 1 to the Goods Convention, which no longer satisfied the requirements of the day, owing to new materials and new products which had been added to the traffic, and owing also to the special dangers connected with electric traction. In 1910 it proposed the convening of a technical conference and for this purpose submitted to the Swiss Federal Council in 1911 the complete draft of a new Annex. The Conference, in which Bulgaria also participated, met at Bern in July, 1912, and drew up a Final Procès-Verbal, which included the complete text of the new Draft Annex 1; the latter only requires to be transformed into a convention by a diplomatic conference and to be approved by the contracting States. The question of constituting a permanent commission to deal with requests for amendments to Annex 1 has not yet been settled. The Conference instructed the Central Office to draw up an alphabetical table for Annex 1 for the use

of railway officials, this table to contain a systematic statement of all the conditions regarding the transport of the numerous objects detailed in the Annex. This work was completed in 1913, and received the approval of the contracting States, but its adoption in the service of international transport was made conditional upon the coming into force of the new Draft Annex.

The question of a third conference to revise the Goods Convention was raised as early as 1911, but it was desired to await the approval and ratification of the Final Procès-Verbaux of the two Conferences which were then being held (the Passenger Conference of 1911, with which I will deal later, and the Technical Conference of 1912). This revisional conference was fixed in 1913 for the following year, but the Central Office proposed, for the reasons given above, to postpone it until the spring of 1915, in the hope that, in the interval, the instruments drawn up by the two above-mentioned Conferences would have been transformed into definite agreements. When the world war broke out, none of the contracting States had yet answered, and the conference was then indefinitely postponed.

The question of a draft international convention on the transport of passengers and baggage, which was not discussed by the Bern Conference of 1905, but was referred to the Central Office for necessary action, was again considered by the latter in 1908. In September of the same year, the Central Office submitted to the Swiss Federal Council a new draft which was transmitted in the following year to the States participating in the Goods Convention. A Conference assembled at Bern in May, 1911, and Sweden, Serbia,—the latter having recently entered the International Transport Union,—and Norway, which had shown a desire to participate, also took part in the deliberations. The labours of the Conference resulted in a Final Act, which included, in addition to the general and final provisions, a Draft Convention, Draft Organisation for a Central Office, and a Draft Final Protocol. This Final Act has now to be transformed into a definite convention by a diplomatic conference; the convention would then have to be approved by the signatory States and afterwards ratified by their Parliaments. It is to be hoped that these last formalities will shortly be accomplished. I will say only a few words regarding the Convention itself. It consists in the first place of a permanent section,—the actual Convention—and a non-permanent section,—the code of regulations for its execution, with the annexes relating thereto. It may be divided into four chapters, as follows :

I. The first chapter contains regulations of a general nature : scope, obligation to transport, responsibility of the railway for its employees and other persons; bases for calculating the cost of transport, validity of rates, monetary unit, application of national law.

II. The second chapter contains articles particularly affecting goods transport,—goods which may not be transported, or which may be so only under certain conditions; form and tenor of a way-bill; responsibility for the information contained in way-bills, and verification by the railway authorities; surcharges; preparation of transport contracts; duplication of way-bills; packing of goods; handing over to transport authorities; customs, octrois, and police formalities; calculation of the cost of transport, contingent expenses and outlay; payment of costs of transport, irregular application of rates, instructions, repayments, outlay; subsequent instructions by the forwarder, obstacles to transport, delay in delivery, and delivery; right of security granted to railways, obstacles to delivery; statement of losses or damage; responsibility of the railways for total or partial loss or damage, limitation of responsibility as regards the place of destination in the case of certain risks or loss of weight; presumption of loss of goods; amount and limit of compensation; declaration of interest in delivery; fraud or grave error; interest on the sum fixed as compensation; loss of the right to claim compensation; lapse of right of action against a railway; exceptional claims and counter claims; right to bring an action against a railway; collective responsibility of the railways, collectivity of transport.

III. The third chapter comprises all causes concerning settlements between railways following on the payment of compensation; the procedure for settlement, the special conventions dealing with settlements, restrictions on distraint for debt; the binding character of the proceedings before the competent court, execution of judgments and guarantees to be furnished to ensure payment of costs.

IV. The fourth chapter contains all the clauses relating to the Central Office of International Railway Transport, the list of railways affected by the Convention, the accession of new States, revisional conferences and the duration of the Convention.

Annexes. — *Annex* 1 contains, indiscriminately arranged, the various instructions relating to articles accepted for transport under certain conditions.

Annex 2 consists of the standard type of way-bill.

Annex 3 contains the declaration to be made in each particular case of consignments delivered without packing, or with defective packing.

Annex 3a, the General Declaration for similar consignments.

Annex 4 consists of the specimen form for subsequent disposal concerning goods. Lastly, there is a Protocol with certain explanatory provisions for various classes of the Convention.

As regards the draft containing provisions with regard to the carriage of articles allowed under certain conditions, Annex I of the original Convention of October 10th, 1890, included 35 headings; but even by January 1st, 1893, it no longer met the needs of circumstances; new regulations and conditions for transport were drawn up at the Technical Conference at Bern in June 1893, but in this revision the articles were not grouped in categories; at the first Revisional Conference at Paris in 1896, a few modifications only were introduced, whilst the second Revisional Conference at Bern in 1905 devoted a considerable part of its time to the completion of the Annex, without, however, rendering it more systematic: this Annex now includes under 53 headings (several of which are double or treble) solids, liquids and gases, indiscriminately mixed, under the most various conditions regarding packing and transport.

Since 1910 the Central Office has been dealing with the reorganisation and recasting of this Annex, making use of the classification used in the French regulations of November 17th, 1897, for the transport of dangerous materials, and also of Annex C of the German transport regulations.

The draft scheme which resulted from the deliberations of the International Technical Conference at Bern in 1912, included six categories :

I. Explosive materials.

(*a*) Explosives for mining, and fire-arms.

(*b*) Munitions.

(*c*) Detonators and fireworks.

(*d*) Compressed and liquefied gases.

(*e*) Materials which, when in contact with water, release inflammable gases, or which facilitate combustion.

II. Materials liable to spontaneous combustion.

III. Combustible materials.

(*a*) Liquid.

(*b*) Solid.

IV. Poisonous materials.

V. Corrosive materials.

VI. Offensive or evil-smelling articles.

Provisions regarding measures to be taken on lines operated by electric traction had not yet been issued, because electric traction was still in its infancy, and it was desired to avoid complicating the application of the revised Annex.

The Central Office was instructed by the Conference of 1912 to draw up an alphabetical list, for use at stations, of the articles contained in Annex I. As this list had to be translated in most of the countries, the Office did not adhere to the alphabetical order, but kept strictly to the classification and numbering of Annex I, which it drew up in the form of tables, giving in respect of each article the whole series of successive operations, namely, category, description, lettering and addressing on parcels, external or internal packing, declarations and references in the way-bill, nature of the goods transported, weight, combination or exchange with other articles, wagons used, tank-wagons, handling during the journey, special requisitions regarding the goods, unrestricted demand, empty receptacles, handling after acceptance, precautionary measures taken, exceptions, and so forth. Special measures regarding the manufacture of receptacles, disinfection and police measures to be observed, also appeared in the Annex. This practical and sensible solution will enable railway stations and forwarding agents

to dispense with the text of the Annex itself, as it is contained in its entirety in the list thus drawn up. It now only remains for the Annex itself to be approved.

As Article 3 speaks of rolling-stock, the Chief of the Technical Division of the Swiss Railways at Bern has asked me to give you some information regarding *technical unity*. As you know, it is the Federal Department of the Swiss Railways which has under its direction the technical unity of railways.

The object of technical unity is to lay down instructions regarding width of gauge, technical conditions of goods wagons used for international traffic, and the regulations regarding the sealing of wagons which have to pass through a customs office. Those regulations do not directly concern the public; they are conveyed to the railways through the agency of the competent authorities of the various States concerned. They are, in short, provisions intended to regulate and facilitate the international transport of goods; an attempt has been made to regulate, as far as possible, the conditions which the rolling-stock must fulfil in order to enable it to travel on main lines, especially between Italy and Germany and between France and Austria. As early as 1880 the Swiss Government had prepared, in anticipation of the opening of the St. Gothard, draft regulations to facilitate the transit of rolling-stock.

The first Conference took place at Bern in 1882; it included delegates from the four States which are neighbours of Switzerland. It produced the *Final Protocol of October 21st, 1882*, which contains the technical conditions to be fulfilled by rolling-stock intended for international traffic, and also provisions as to gauge; it further provides for the use of a standard loading-gauge, and the maximum general dimensions of carriages and wagons. The Conference also aimed at the adoption of a uniform method of sealing wagons which have to pass through the customs.

A second Conference, held at Bern in 1886, continued the work of the Conference of 1882. At this Conference, in addition to Germany, Austria-Hungary, France and Switzerland, the following new States were represented : Belgium, Bulgaria, Greece, the Netherlands, Roumania and Serbia. The results of this Conference, in so far as they related to technical unity properly so-called, were embodied in a Final Protocol, and again in a second Protocol relating to the sealing of wagons which have to pass through the customs. The States were also asked to send the dimensions of their loading-gauges to the Swiss Government with a view to their yearly publication, together with a map of the railway systems open to international traffic.

A third Conference met at Bern in 1907, at which the following States were represented : Germany, Austria-Hungary, Belgium, Bulgaria, Denmark, France, Greece, Italy, Luxemburg, Norway, the Netherlands, Roumania, Russia (only in respect of 520 kilometres of line to the left of the Vistula), Serbia, Sweden and Switzerland. The *Final Protocol* on Technical Unity, properly so-called, includes conditions relating to width of track, construction of rolling-stock (wheels, buffers, couplings, projecting parts of vehicles, sectional dimensions, locks of passenger coaches, sliding doors, notices), the conditions for maintaining this stock (defects justifying refusal), provisions for the loading of wagons, and finally provisions for the summoning of Conferences, the adherence of new States, the approval of decisions arrived at by the Conference, withdrawal from the Union, standard signs for vehicles, and the double key for coaches used for international transport. At this Third International Conference in 1907 a *Final Protocol* was drawn up regarding the sealing of wagons which pass through the customs, laying down the conditions guaranteeing the safe sealing of these wagons.

The decisions of this third Conference were revised in 1911 and 1912 by an International Conference to establish a standard gauge for goods wagons, determining the transverse dimensions of vehicles and loads. The Final Protocol of December 14th, 1912, includes some modifications of the text of 1907, and it is this new text, called the 1913 Text, which is now in force; it includes among other provisions, the introduction of the **T** within a square, denoting transit wagons, that is to say goods wagons which may run without verification on all lines open to international traffic (except lines explicitly excluded), and also the maximum standard dimension gauge for goods wagons and the load tables (*tableaux pour chargements*).

I must again remind you that in 1909 an International Commission was instructed to draw up a programme for the conditions laid down in respect of continuous brakes for goods trains; the result of these deliberations was embodied in a Final Protocol,

describing first the conditions to be fulfilled by the brake, the programme of the experiments to be carried out, and the invitation to the Swiss Government to transmit to the Contracting States the Final Protocol and the proposals concerning the adoption of a continuous brake. The Swiss Government was also requested to come to an agreement with the Contracting States with regard to the action which they might think it advisable to take in pursuance of the proposals contained in the Final Protocol.

The question of the continuous brake became of capital importance. In 1912 and 1913 experiments were made in Austria and Hungary, with regard to which detailed accounts have been published giving all the desired information; but the trials were interrupted by the war and no further steps could be taken as regards international continuous brakes; it is to be feared that isolated attempts may only prejudice its universal adoption, and it is extremely desirable that the whole of this question should be again considered from the international point of view.

The Swiss Government still considers itself responsible for the maintenance of technical unity, and it would be most desirable if an opportunity could be found at Barcelona to draw the attention of the delegates of the various States and administrations to the great importance of technical unity in international traffic.

To sum up, the contracting States comprise practically the whole of continental Europe : Austria, Belgium, Bulgaria, Denmark, France, Germany, Hungary, Italy, Luxemburg, the Netherlands, Norway, Roumania, Russia, Serbia, Sweden and Switzerland, and they now contain all the elements for a complete code of transport, providing for the transport of passengers, baggage and goods, as well as the final provisions. There also exists a standard registration ticket for baggage and an international way-bill for goods, the usefulness of which has already been proved. Perhaps the other continents will find in these provisions the basis of a similar arrangement which they may be able to conclude and adapt to the special circumstances of each.

The PRESIDENT (speaking in French). — I thank the Director of the Central Railway Office for the detailed statement which he has made. The whole Conference fully realises the importance of basing our debates on a really practical foundation.

M. BIGNAMI (Italy; speaking in French). — Italy has gladly welcomed the Draft Convention on the International Regime of Railways, which will have the effect of enlarging the sphere of application of certain principles which have already been adopted in several countries and which, in view of their great and universally recognised usefulness, form the subject of reciprocal obligations. Italy is convinced that such an admirable means of communication cannot yield the full results which we are entitled to expect unless a general understanding is arrived at to enable the systems in force on railways to be made as uniform as possible. This idea is an old one. No sooner had the development of this means of transport, as yet less than a century old, facilitated and increased communications between neighbouring countries, than it was found necessary to conclude agreements and to enter into mutual engagements in order to afford all possible facilities to passengers and to trade in general. These agreements permitted the growth of new communications and systems of transport which it would otherwise have been impossible to provide. As you all know, the operation of railways is governed largely by agreements of an international character, for example, as regards the exchange of rolling-stock, which enables goods to be sent and passengers to be transported for distances of thousands of kilometres without transhipment; the laborious drawing-up in common of railway time-tables both for international trains and for connections, a system which enables the greatest possible speed to be attained, both for long journeys and in the transport of perishable goods; the regulations in force between neighbouring countries in respect of the services at frontier stations, in order to enable passengers and goods to be transported from one country to another as quickly and conveniently as possible; the institution of through tickets between different countries, which make it possible to travel without taking a fresh ticket at each frontier; and the establishment of uniform scales of charges, thus affording the public, among other great advantages, that of knowing in advance, and with certainty, the cost and conditions for the transport of goods from one end of a journey to the other.

Finally, as M. Etienne said, thanks to the brilliant idea and perseverance of two Swiss citizens, M. Christ and M. de Seigneux, international legislation has been in force for more than thirty years regulating the relations between the public and the railways. These relations have been greatly simplified and unified by this legislation, to the great benefit of trade; indeed, the general uncertainty and the obstacles which prevented consignors from securing respect for their rights—though these were guaranteed by law in every country through which the goods were sent—sometimes led the consignors to renounce these rights.

You see then that the Draft Convention which we are to discuss marks a new stage on a journey which is already half completed. Several of the principles laid down in the Preamble and in Articles 1, 2 and 3 have for long been observed in practice by all those countries which clearly understand their usefulness, not to say their necessity. There is therefore, I imagine, no need to discuss these principles except to define more closely the obligations which we are to undertake.

Having said this, it seems to me that the excessively cautious form of the Draft before us, in which the High Contracting Parties agree to recognise as highly desirable the adoption of the measures contemplated, might with advantage be replaced by a more definite obligation, on the model of those contained in the Conventions on Freedom of Transit and on Navigable Waterways. In the opinion of the Italian Delegation, however, the principles laid down in Article 4 call for more careful treatment; in particular, the first paragraph of this article is of great importance. These principles affect several aspects of the economic policies of many countries, and these policies cannot be modified. We must point out that no country would be bound to modify its economic policy solely in order to conform to the theory of perfect equality, especially in view of the fact that, in other points in all these draft Conventions, many other exceptions to this theory have arisen. The provisions of this article are the result of long discussions, and finally of one of those compromises which have rendered possible the Conventions which we are discussing. In the interest of the goal at which we are all aiming, the Italian Delegation ventures to draw the attention of this assembly to the dangers inherent in the above-mentioned principles, by expressing the wish that these principles should be left untouched except as regards form, or in order to define more exactly—and Italy considers this necessary—the justifiable exceptions which appear at the end of the paragraph. The application of these provisions, if not left to the free interpretation of each country, might be thwarted by certain systems of law which could not be modified without gravely injuring economic situations based on facts of a different nature and the result of long experience. You are aware that the laws which deal with the policies of railway rates has not been merely improvised; it is not empirical, and it could not be changed from day to day, however great might be the desire to adopt principles of uniformity.

The second paragraph of this article merely repeats the principle laid down in the International Convention on Railway Transport, and it is to be hoped that those countries which are not yet parties to this Convention will not raise difficulties in this respect. With regard to the rest, the Italian Delegation considers that everybody will be in agreement.

Finally, this Delegation desires to submit to the favourable consideration of the assembly a proposal which would not go beyond the limits of the Convention, and the object of which would be to bind any State which may decide to electrify a line on the frontier, to assist as far as possible a neighbouring State which might do the same, but which might be in difficulties through an insufficient supply of the necessary power. From the point of view of international communications it would indeed be a great pity if the development of this new means of traction, the great usefulness of which is undeniable, were hindered through lack of electrical power, if the latter could be granted to a poor country by a neighbouring country which had an abundant supply of it.

The Italian Delegation therefore expresses the sincere desire that the work of the Conference may shortly bring forth all the fruits which may be expected from the reconstruction of communications and the development of relations between nations, which would hasten the march towards the common goal,—the consolidation of Peace for the benefit of progress and civilisation.

M. CARLIN (Switzerland: speaking in French). — The Swiss Delegation thinks that it should now take part in the general discussion on the Convention regarding the international regime of railways. The Federal Government is only too glad to give its support to the provisions contained in the Draft Convention. Nevertheless, in its capacity as the authority entrusted with the duty of organising and supervising the International Offices now existing at Bern, it must now call attention to the following facts :

Article 24 of the Covenant lays down that *there shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent.*

The Swiss Delegation will therefore welcome any provision which is in conformity with the spirit of this article; that is to say, the Swiss Government will agree to the placing of the international offices at Bern under the direction of the League of Nations, as soon as all the States Members of the Unions for which these offices have been created shall have given their consent.

In virtue of these considerations the Swiss Delegation intends to submit a written amendment to Article 6 of the Convention.

M. von der LEYEN (Germany; speaking in French). — The Draft International Convention on Railways is distinguished from the Conventions which have hitherto been dealt with, in that it does not concern universal means of transport, but only the railways of connected territories. It would thus be impossible to conclude, for example, Conventions between European and American or Australian railways. This is equally valid as regards the special Conventions provided for in Article 4. Several of these special Conventions have been concluded between European railways. I need only recall the International Union of German Railways, established in 1846, which includes not only the German railways but also those of Austria, Hungary, the Netherlands, Roumania and a part of the former Russian railways; by means of this Union, many of the desiderata mentioned in Articles 1 to 3 have already been accomplished. The Union has already been in existence for seventy-five years.

Since the conclusion of the Bern Convention on October 14th, 1890, the greater part of the European railways form a unit by which all the conditions provided for in Articles 1 and 2 are, or will be, realised, and even exceeded. This Convention covers most European railways, and also the Russian and Asiatic Russian lines. The total length of those lines is 270,000 kilometres,—more than a quarter of the total mileage of all the railways in the world. This Convention is not mentioned in the Draft Convention. The explanation given upon page 88 of the *Green Book* (1) contains, however, the following recommendation :

> The League of Nations will not succeed in its mission by making a clean sweep of all that has gone before, but only, on the contrary, by setting its seal upon every effort which has already been made towards the cause of international co-operation and the achievement of the task now set before the League. It should lend its support to the maintenance, in their integrity, both as regards their methods and their field of activity, of any existing organisations of proven worth, such as that created by the Convention of Bern of October 14th, 1890.

This leads to the presumption that this Convention is to be maintained to the full extent of its scope and provisions, and that the organisation which it provides is to remain intact in its present form, and is not to be brought into relation with the League of Nations except in so far as its annual reports are henceforward to be communicated to the League. This provision is also in conformity with Article 366 of the Treaty of Versailles, which provides expressly that the Convention, and any subsequent additions to it, shall be maintained in the first place for a period of five years, and that, after the lapse of that period, its terms should be revised. Arrangements had already been made before the war for such a revision, but the war prevented it from taking place. Other reasons which render it necessary have arisen as a consequence of the war. Certain of the Contracting Parties to this Convention no longer possess the same extent of territory, and their railways have been allocated to other new States. Moreover,

(1) See p. 209.

the financial provisions of the Bern Convention require revision, by reason of the present state of the rates of exchange. As I have already said, all the European States, with the exception of Spain, Portugal, Turkey, Greece and Great Britain, adhered to the Bern Convention. It would certainly be desirable that, when it is revised, or even before, all the Continental States should take the necessary steps to accede to the Convention. In my belief, the Contracting Parties to the Convention would certainly welcome such a request. As regards Great Britain, the situation is somewhat different; there does not yet exist any direct communication by rail or train-ferry between the Continent and Great Britain. Moreover, I believe that the position of British railways as regards civil law is different from that of the railways in the States forming part of the Bern Convention. These difficulties are, however, not insurmountable, and I venture to remind you that at a meeting of the *International Law Association* held in Berlin about ten years ago, the representatives of British jurisprudence present expressed their great desire that Great Britain should adhere to the Bern Convention.

It seems to me clear that the proposed revision cannot alter the principles of the Convention. I may remind you that at the first Revisional Conference, held in Paris in 1896, the President, M. Alfred Picard, the famous compatriot of the French Delegation, expressly declared in the Preamble that as the provisions of the International Convention had proved their worth, it would be well to refrain from making any fundamental changes.

The Bern Convention in its present form only applies to the carriage of goods; it will therefore have to be extended in order to include the transport of passengers and luggage, as well as mentioned in Article 2 of the Draft. You know, of course, that as early as 1911 an International Draft Convention for the transport of passengers and luggage was drawn up with the collaboration of all the States interested in the International Bern Convention; this Draft only requires to be approved, and could easily be inserted in the existing Convention,—indeed, provision was made upon the occasion of the revision in 1915.

The other States of the world would, of course, have to be left free to conclude similar agreements amongst themselves.

Article 3 of Annex 4 expresses the desire that the Contracting Parties should also come to an agreement on the subject of certain technical questions touching the operation of railways. As far as most European railways are concerned, this recommendation was fulfilled by the Technical Conventions of May 15th, 1896, and May 18th, 1907. Article 282, Section 4 of the Treaty of Versailles, which gives a list of the International Conventions which are to remain in force, particularly mentioned the Convention referred to above, while Article 370 compels Germany also to adhere to this Convention. I do not wish to enter into the details of such Technical Conventions; M. Étienne has already spoken of them. They still give rise to great financial difficulties. I would only remind you of the differences in the width of gauge, the unification of which would give rise to very great expense. I do not think it is probable that these non-European States whose railways are not of the so-called "standard" gauge of the European railways will decide to expend considerable sums for this purpose. Certain results were obtained through an attempt made before the war on the Australian railways, but, so far as I know, it has not hitherto been possible to put these to practical use on account of the great financial difficulties involved.

While the Draft Convention is in general confined to the expression of a desire for the unification of international equipment, paragraph 2 of Article 4 contained the following text, which is a definite one :

> The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void.

This ruling, which raises a very serious question, is taken from Article 11 of the Convention of Bern, which, however, refers only to rates for international traffic; in 1886 all the Contracting Parties refused to curtail their liberty as regards the regulation of *home* traffic, and declared that these provisions were to be found in the regulations for home traffic in every country. The League of Nations would therefore have the right

to interfere in the sovereignty of different States on the question of fixing tariffs, which has always been left to the sovereignty of the different States. It will not be easy to exercise these rights, and it appears extremely doubtful to me whether a number of non-European States would be inclined to submit to such a ruling. A similar ruling is, however, already in force for traffic between the different States of the United States (Inter-State Commerce) in conformity with the *Inter-State Commerce Act;* but, as regards home traffic, this ruling has not been carried out everywhere. I do not know how the matter stands as regards the railways of South America, Asia, and elsewhere.

The German Delegation is in a position to declare itself in agreement with this ruling, which is already incorporated in our regulations for transport (*Verkehrsordnung*).

The German Delegation has no objections of any importance to the other proposals contained in the Draft, if it is understood that the Convention of Bern would be maintained in its present form and enlarged in conformity with the provisions which it already contains. When the time comes for discussing details, certain changes may be found desirable, and may perhaps be the subject of special deliberations; but as regards the general principles of the Draft Convention, the German Delegation declares that it agrees to them, and is of opinion that as a result of this Convention the economic relations of all States will experience a very desirable improvement.

The meeting adjourned at 12.50 p.m.

FIFTEENTH MEETING OF THE CONFERENCE

(Thursday, March 31st, 1921, at 11.30 a.m.)

GENERAL DISCUSSION (CONTD.) — LIST OF MEMBERS OF RAILWAYS COMMITTEE

The meeting opened with M. Hanotaux, President, in the Chair.

GENERAL DISCUSSION (contd.)

The PRESIDENT (speaking in French). — We will resume the general discussion on the Railways Convention.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The regulations of the International Regime of Railways are of great importance to Brazil. This is not because our country is at this moment served by railway systems already connected with those of neighbouring countries, but because in a not far distant future the Brazilian railways will necessarily form the shortest means of communication between the greater part of the Atlantic coast and that of the Pacific. It may safely be said that the Brazilian railway system is called upon to play a great part as regards relations between Europe and most of the countries of South America. When the basins of our great rivers are connected with each other by rail, Brazil will certainly be the great centre of communications within the continent, and the international importance of our railways will be very considerable. For this reason the Draft Convention which has been submitted to us concerns our country very closely.

The authors of this Draft have shown great wisdom. They have not lost sight of geographical differences, and they have left the contracting parties very extensive freedom to conclude *inter se* conventions. The scheme permits of all combinations between neighbouring countries which can be achieved without any prejudice to the general interest.

Brazil, then, considers the Draft acceptable, but we must not go further. The situation of the countries of South America as regards railways, and particularly that of Brazil, is very different from the European situation or from that of North America. With us the railway problem presents difficulties, both economic and financial, which in Europe have not to be overcome. It will be enough for me to remind you that Brazil is still passing through a period of construction,—a difficult period for us. There is scarcity of labour, there is insufficiency of capital; raw material must be imported from distant countries, bridges, viaducts and so forth are constantly required in a country which abounds in natural difficulties of every kind. It is true that we already possess nearly 30,000 kilometres of line in operation, and this undoubtedly marks considerable effort. But what is this figure compared with what must be attained in order to connect all the points in a vast territory of 8,500,000 square kilometres?

You will understand, then, how difficult it would have been for us to agree to any Convention which is not restricted to generalities. I must add that the Brazilian railways are not yet all connected with each other; that of the State of Rio Grande do Sul is the only one which touches the frontier. This was the first occasion necessitating an agreement between Brazil and Uruguay for the purpose of regulating the carriage by rail of goods coming from one or the other country or simply in transit. This agreement was signed at Rio de Janeiro on May 15th, 1913.

These few indications are enough to prove to you the anxieties which attend and the very legitimate interests which must govern our consideration of the Draft of the Convention on the International Regime of Railways.

The first two articles contain very practical conditions which should be adopted wherever possible. Article 3 concerns the mutual employment of rolling-stock. Whilst recognising that it is very desirable that the Contracting Parties should adopt all measures, including technical provisions, calculated to permit and facilitate the mutual use as well as the exchange of their rolling-stock, we must state that we cannot accept this condition except as a simple indication, a recommendation, according to the wording of the Draft itself. We sincerely regret that we cannot share the view of the Italian Delegation upon this subject.

It would perhaps be of interest if I tell you that though the technical conditions on certain of our lines are uniform, this uniformity does not yet extend to the whole of our lines. I may add that at present rolling-stock is exchanged only upon a limited portion of the lines. You will see from this alone that the aim before us, the complete unification of the railways which cross the same continent, has not yet been attained in the largest country of South America. I therefore venture to urge you to restrict yourselves to the general terms which have been proposed to us.

Article 4 of the Draft contains very useful suggestions, which we can accept; but we should be glad if this article were completed. In Brazil there are no tariffs based upon the origin of goods. The transport of passengers is carried on under complete conditions of equality, whether they are Brazilians or foreigners. There is nothing in this article, therefore, contrary to the general practice of our country. We do not see any difficulty in agreeing that the special Conventions which the High Contracting Parties are called upon to establish should *contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs... which would depend upon... the flag or ownership of the vessels which have been or are employed before or after their transport by rail.* This is a very just principle, and we give our full adherence to it. We wish, however, that Article 4 had been completed in the sense that the special Conventions should provide for an exception to this principle in cases where the owner or the charterer of the vessels should establish differential freight tariffs based upon the nationality or the ownership either of the consignor or the consignee.

We are faced here with the same circumstances as apply in the case of Article 2 of the Transit Convention, which gave rise to the addition proposed by the Brazilian Delegation (1). This reservation, again, seems to us quite justifiable. In our opinion it is in conformity with the spirit and the letter of Article 23 (*e*) of the Covenant.

The foregoing remarks are a summary of the ideas suggested to us by the Draft Convention. Naturally, minor alterations will need to be introduced in order to bring the Draft more into accord with the Transit Convention. At the same time, allowance will have to be made, when Article 11 is drafted, for the provisions already drawn up concerning the powers of the Advisory and Technical Committee on Communications and Transit.

One final remark and I will conclude. As soon as a problem of international life arises and a solution is contemplated, an inevitable succession of questions immediately appears, each constituting an essential element of the problem which has been considered. This is the case, for example, with fuel in connection with the problem of communications. Transport by rail implies the necessity for fuel. But there are countries where considerable traffic must be carried by rail and which nevertheless have no fuel. Others, more favoured by Nature, have an abundance of such fuel. The former are obliged to purchase from the latter this fuel which is indispensable for the running of their locomotives. As railway traffic varies, then, according to the distribution of raw materials, and as this in its turn is unequal, it appears highly desirable in the general interest that those who have the good fortune to possess raw materials should grant favourable conditions to those who are in need of them.

It is certainly not possible to stop to consider this question here; it is obviously of a commercial nature. But it is so closely connected with the working of that great

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(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit,* pp. 58, 183, 191 and 255.

instrument for the exchange of goods, the railways, that it would perhaps be necessary to bring it to the notice of those who are to continue the work of the Conference; in our opinion this would only be the logical consequence of the programme which has been submitted to us.

It is in a spirit of international solidarity, of loyal and active collaboration that we venture to draw your attention to these aspects of the most complicated problem alluded to in Article 23 of the Covenant. This is our point of view and our wish. We are all animated with the same desire for the success of the efforts of this Conference. I will thus terminate with the words *sursum corda*, and now let us work for the common good.

M. ORTUÑO (Spain; speaking in French). — I have asked our President, whose courtesy we know so well, to allow me to speak to you on three questions of international importance with which Spanish opinion has for long been occupied. These three questions are, in the first place, the "direct" line Pyrenees-Madrid-Algeciras; in the second, the gauge of the Spanish lines; in the third, the situation of Spain with regard to the Bern Convention. I thought that it might be desirable for me to give the Members of the Conference on Communications and Transit certain information on these points.

The scheme for the direct line Pyrenees-Madrid-Algeciras is completed as regards the section between the frontier and Madrid, and has reached the stage of a preliminary draft scheme for the section Madrid-Toledo-Seville-Algeciras. You will see how much that means from the point of view of universal transit; henceforward Spain will become more and more the country through which transit must necessarily pass between Central and Western Europe and Africa and America. The length of the line will be very greatly reduced; instead of the 641 kilometres of the present line Irun-Burgos-Valladolid-Madrid, the new line will be only 410 kilometres long. The maximum gradient will be 2 % and the minimum curve-radius 400 metres. The line will be operated by electric traction with a continuous current of 3,000 volts, and the distance will be covered in 6 or 7 hours instead of 12 hours. As regards the line from Madrid to Algeciras, *via* Seville and Toledo, the total length of line will be 630 kilometres instead of 744, and the time taken will be from 8 to 9 hours. The maximum gradient will be 1.5 per cent., the minimum curve-radius 600 metres; the system of traction will be electric. The total length of this line will thus be 1,040 kilometres instead of 1,385. At the moment various half-way solutions are being considered which would include the utilisation of certain lines already in operation. This question is of importance to all those who are here, since it is in conformity with the fundamental aims of the Conference.

The second question particularly concerns Spain, and on account of it we have been obliged to submit an amendment to Article 3 of the Draft Railway Convention which we have before us. You will understand why Spain does not decide to make a change at once; she does not do so because she does not believe it possible.

In Spain the stipulations in force to-day with regard to railway traffic are in no way opposed to the principles of the Draft Convention on the International Regime of Railways which we are now discussing. The only limitations to freedom of transit are those imposed upon us by the capacity and technical conditions of our railways, and by the measures rendered necessary for protection against smuggling. There is absolute equality of treatment in Spain, with no discrimination as regards flag, country of origin, starting-point or destination, either for passengers or for goods. We know, of course, that there exists a difficulty of a technical nature which prevents the rolling-stock of Central and Western Europe from running on the railways of the Iberian Peninsula. That this is impossible is due to the fact that the normal Spanish gauge is, as every one knows, 23 centimetres wider than the European gauge. The same is true for Portugal.

The regulations governing the construction and operation of the Spanish railways were drawn up in 1844, and it was then that the width of the gauge was fixed at 6 feet, —the difference is thus explained, since the Spanish foot is 28 centimetres in length instead of 24 centimetres; that is to say, the width of the gauge was fixed at 1.736 metres from rail to rail. It was considered that transport capacity and the stability of express trains would thus be increased. But this wide gauge means that curves

must be made with a larger radius, and, in a country whose topographical features are as varied as is the case in Spain, this involves much greater initial expenditure. The gradient has often to be increased, to the detriment of the carrying capacity, which it was intended to increase, and this capacity is decreased by the fact that the loading-gauge adopted differs little from that of the rest of Europe; in a word, the topography of the country has disappointed our anticipations. It is clear, then, that this difference in gauge involves inevitable technical as well as economic difficulties, and difficulties of general circulation between the system of the Iberian Peninsula and that of the rest of Western and Central Europe.

No doubt it is possible to change the Spanish gauge to the normal European gauge. Gauges were narrowed long ago in other countries. We may mention Canada, where the Grand Trunk and the Great Western were constructed with a gauge of 1.678 metres. The former company made the change on its main line, more than 900 kilometres in extent, in the night of October 3rd, 1873; but it had to employ several years in the requisite preliminary work. In the U. S. A., the transformation of the 16,030 kilometres of lines in the South, on which the gauge was reduced from 1.525 metres to 1.448 metres, an extent of 77 millimetres, was also effected very rapidly,—after a long period of preparation, however. The final operation began on May 21st, 1886, and the trains were again running on June 2nd following. In England the Great Western Railway constructed its first line from London to Bristol with a gauge of 2.135 metres. In 1867 this company's system had 2,300 kilometres of this gauge, several sections of which, however, had a third rail allowing standard-gauge trains to run on these lines. The work of changing this line to the standard gauge of 1.435 metres was begun in 1869. In 1892 there were still 270 kilometres of line of the 2.135 metre gauge. In order to transform this remaining length of line, traffic on the section was entirely suspended on Saturday, May 21st and Sunday, May 22nd, 1892. Despite the rapidity of this final operation, the complete transformation of these 2,300 kilometres of line took no less than 23 years.

In Spain the change would, I think, be very much more difficult than in the countries to which I have referred. The American and Canadian lines and most of the Great Western were double track, whereas in Spain we have only very short distances of double track. It must be remembered also that in the countries mentioned the lines which had to be changed were exceptional cases; in changing them, therefore, substantial advantages accrued, and these lines were put into communication with the other railway systems of the country. In Spain the difficulties during the period of transformation would be very considerable. In order to put a line,—for example, the line from Barcelona to the frontier—in direct connection with the French lines, communication between this line and the rest of Spain would be interrupted for several years. I cannot even discuss the solution of having recourse to a third rail, which was fully examined long ago and finally rejected. I do not intend to enter into technical considerations on this point; everyone here is acquainted with them.

What would be gained by this change of gauge? It would bring no benefit within the country itself. The benefit would be reaped only by a certain portion of the international traffic which passes by the French frontier; on the other hand the change would mean the complete isolation of Portugal, and could not take place, therefore, without a previous agreement with our neighbours, who indeed adopted our gauge with the very object of avoiding difficulties of communication with us. As regards the benefits which Spain would secure, an idea of these may be formed from the statistics of passenger and goods traffic *via* the French frontier. In normal times, shortly before the war, the number of passengers who crossed from France to Spain and *vice versa* by the two present lines,—Cerbère-Port Bou and Hendaye-Irun, represented a proportion of 1.84 per cent of the total passengers carried on the main lines—12,000 kilometres in length—in the interior of Spain. It should be recalled, too, that as a rule not all passengers who crossed the frontier would avoid changing trains under the new conditions, since the new system would only apply to direct express and *de luxe* trains, the traffic on which represents some 15 per cent of the total traffic of passengers to the frontier, that is to say, less than 1.3 per thousand of the total number of passengers carried on the Spanish railways.

Then as regards the goods traffic; shortly before the war, exports and imports by the

two international lines amounted to 322,879 tons. This will increase, though certainly not to any very great extent, when the three new trans-Pyrenean lines are open for traffic If this international traffic is compared with the total goods traffic within Spain, which amounts to 21,650,755 tons, it is clear that the proportion is not even 1.5 per cent, and is still further reduced when it is remembered that not all goods would pass the frontier without transhipment; even if this were so as regards all exports, which mainly consist of natural products, a considerable proportion of the imports, being manufactured goods, would have to be unloaded for customs purposes.

Spain might in addition have to fear that the inequality which periodically arises between the amount of her exports and her imports might occasion exceptional demands for rolling-stock beyond her frontier; she would thus find it difficult to meet her internal traffic requirements. Apart from this consideration, which is of very great importance, serious difficulties connected with such a change of gauge would arise from the change itself; such as the very considerable cost of the necessary work and the disorganisation in internal transport, which might persist for many years. The cost of this work, which was under consideration in 1913, amounted to 1 milliard pesetas, and to-day the figure would be considerably higher; at present prices the work would probably cost double. We must point out that this sum would produce great benefits at the present time if it were employed on the construction of a double track where such does not yet exist, or on perfecting the present tracks, improving or extending equipment, the construction of rolling-stock to meet the increase of traffic, and finally on the construction of a system of secondary lines. We have also to consider the construction—a matter of lasting importance to us—of a direct line from the French frontier to Madrid and Algeciras, the cost of which, as we have stated, would be exactly 1 milliard pesetas.

In my opinion all that we have said clearly shows that the Spanish Government cannot possibly contemplate transforming its railway system at present (this phrase allows some hope for the future), in spite of its great desire to facilitate transit; it will, however, carry out this change as soon as the circumstances which have been mentioned will permit. We cannot forget, however, that Spain, through her geographical situation at the extreme end of Europe, is not only the transit country for Portugal, but also for America, where there are many nations who speak in common with us the language of Cervantes and Camoens. Moreover, we are close to Africa. At Gibraltar a distance of only 12 kilometres separates the two coasts. We think of Dakar when we think of South Africa, and we think of the industrial and commercial development of the whole of this great continent, whose northern coasts we can see from our own coast, and which extends as far as the great British Dominion of Cape Colony, which some future day will see united by railway to Tangiers.

In view of all that we have pointed out, the Spanish Delegation has presented an amendment to Article 3 of the Convention on Railways, to the effect, as you will note, that Spain cannot at present agree to alter the gauge of her lines.

A few words more, if you will permit me, upon the third point,—our accession to the Bern Convention. On this subject, to which reference has so often been made during this general discussion, I will venture to remark that negotiations between the Central Office at Bern and the Spanish Government have been proceeding for some time. Recently, in August 1920, the Office discussed the question with the Spanish Minister at Bern, who then informed him, in October 1920, that he had been instructed by the Minister of State, by Royal Decree, that the Note of the Central Office dated August 29th, 1920, had been communicated for consideration by the Ministry of Fomento (Public Works).

I may say that the Spanish Government is considering the question with all the interest which it deserves, in order to be able to overcome the difficulties due to the fact that, in pursuance of special laws, the railways are at present conceded to private companies. The question will therefore have to be submitted to Parliament. I need not add that the Spanish Delegation is most anxious to see the realisation of the desire which has been expressed that Spain should accede to the Bern Convention, which, in principle, honours the aspirations of the Covenant, since it represents the abolition of frontiers for international railway traffic. It is an anticipation of the work of the League of Nations, and, in fine, it favours that freedom of transit which, in a word, it is our fundamental desire to attain.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — After so many speeches it is perhaps superfluous to dwell any further on the importance of means of transport. I will, however, venture to enumerate a few of their duties. Means of transport are not only an element of security for a country, but also a creative agency for everything, whether material or ideal, which exists in this world of ours. They are the channels through which material and ideal products are distributed as equitably as possible. The most important of all the means of transport are railways; they triumph over all obstacles, valleys as well as mountains.

The geographical situation of our country is such that, after having served as a barrier against invasion, it is now, and always will be, a central junction for transit between East and West. We are inspired with the keenest desire to serve the world in the matter of transit. Nevertheless, as Sir Francis Dent said in his admirable report, and as has been said by other delegates, we must not neglect the vital interests of our own country while serving the common cause. Sir Francis Dent very rightly pointed out that, as regards the application of the Convention, there will be difficulties in countries where the railways belong to the State. It is a fact that in those countries the construction of railways has called for sacrifices from the tax-payers, and these tax-payers demand advantages to compensate them for their sacrifices. I would draw the attention of the Conference to this point in order to explain certain reservations which it is our purpose to make regarding the application of the Convention,—reservations which, however, will only affect methods of procedure. While we admit freedom of transit and the principle of equality in connection with Members of the League of Nations, we ask that the country itself should be assured of the right to control its own rates as regards imports, exports, and transit. Means of transport are, in fact, a weapon in the economic struggle. Take the case of two States *A* and *B*, whose traffic passes through a State *C* on its way to a State *D*. *A* and *B* are competitors in respect of certain products, and are competing to conquer the markets of *D*. If you allow two States to compete with each other in the territory of a third State on their way to a fourth, how can you forbid the country *C*, through which the transit takes place, to protect itself in an equitable manner? I think this example is sufficient, and I will not press the question further. I will merely state that our country is inspired by the principles laid down in the general Convention on Railways. We accept that Convention in the form in which it has been drawn up, but when proposals are put forward with a view to modifying it, either in form or in substance, we shall have more to say on the subject.

I will conclude by recalling the words spoken by our President, M. Hanotaux, at the Geneva Assembly, when he was deputed to report on those questions : *No question is more important from the point of view of technical organisation than that of the organisation of communications.* A little later, the French Prime Minister, M. Briand, on assuming office, expressed himself as follows in Parliament : *The first question which calls for our attention is that of communications, the necessity for free transit, and the ability to re-establish communication between peoples ;* while at the same time the British Prime Minister, Mr. Lloyd George, said that every country is in a state of unrest owing to the lack of communications between peoples and the difficulties attending the exchange of materials. We are entirely in agreement with these eminent men; we all desire to accept the Convention, but with the reservations which I have mentioned.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wish first of all to thank the Chairman for allowing me to announce to the Conference our intention of submitting to it an amendment on the Railways Convention with the object of defining its method of operation.

Before attempting to give a general explanation of this amendment, it will perhaps be useful to review what was done before the war in the matter of the international regime of railways. I shall not touch at length on the Bern Convention; persons more competent than myself have already done so, amongst others the distinguished Director of the Central Office, and M. von der Leyen of the German Delegation, who was one of the authors of this Convention. I would only lay stress on the value of the Convention in making through traffic possible.

We of the new nations which have arisen since the war were able to appreciate the importance of this Convention at a time when—at least temporarily—it did not exist

so far as we are concerned. Since the war the new States have not considered themselves bound by it, but it was then that the work which it had accomplished began to be appreciated. In fact, all the new States have applied it in the form of tariff agreements drawn up between themselves. Thus the Czecho-Slovak Republic at its very creation re-instituted its relations with its neighbours precisely on the basis of the Bern Convention, but unfortunately with certain necessary modifications due to the post-war situation, which in certain respects is unaltered. It is therefore impossible to apply the letter of this Convention, and one of the most important tasks of the Central Office will be to arrange a Conference to revise the Convention and consider certain restrictions which might be applied to it.

The Bern Convention introduced a uniform international obligation,—the single way-bill,—and we must ascertain what improvements might be introduced. These improvements would consist in widening the scope of the Convention to allow of its extension to other matters, particularly to the carriage of passengers and luggage, and to increase the number of States adhering to it. We have heard with pleasure that Spain intends to adhere to the Bern Convention, and this example will certainly be followed by other States.

But the Bern Convention is not enough to regulate international relations in their entirety. There are indeed many cases when for one reason or another there is no single way-bill. It is well known that at the time of the drawing up of the Convention it was deeply regretted that all the States had not found it possible to unify the laws governing internal traffic,—interior jurisdiction. One of the objects to be realised, therefore, would be the unification of the laws, even those governing internal transport, in order that goods sent, even those not included on a single way-bill, might come more or less under the same regulation. Certain States, amongst others France, possess laws for the despatching of goods abroad which are entirely different from those governing the despatch of goods within the country; thus certain difficulties are raised in international traffic regulated by these contracts for separate shipments.

Another sphere in which a definite international regime exists is that of tariffs. I will not enlarge on the subject; I would only refer to a point which to my mind is very important and on which the Conference ought perhaps to express a recommendation. All railway experts are aware that the greatest difficulty which they encounter is the extreme diversity which exists from a formal point of view in the constitution of tariffs. It is, therefore, unnecessary to emphasise the importance of introducing direct rates. It is well known that these afford business men an opportunity of easily calculating the cost of transport, but there is great difficulty in estimating them, on account of the very great diversity of tariffs from a purely formal point of view. The suggestion which we wish to put forward does not in any way infringe the sovereignty of States as regards tariffs; we would desire the Conference to formulate a recommendation to the effect that this question of the unification of tariffs from a formal point of view should be examined. This unification would, moreover, permit the establishment of direct rates to a greater extent than the one actually in force, and would be extremely favourable to the development of international traffic.

There is yet a third domain in which an international regime exists,—that of technical questions. There is no need to emphasise the importance of the Conference on Technical Unity, and I could not state the question better than the Director of the Central Office has done. It is to be hoped that this work may give a still wider scope both from the point of view of the number of States adhering to it and from that of the subjects dealt with.

It is indeed a fact that an international regime in respect of railway questions was already in existence, and the very object of our Conference as well as that of the Convention is to co-operate in the development of international traffic.

Before passing to a short analysis of the Draft Convention itself, may I be allowed to recall in a few words the history of this Convention? It will perhaps be necessary, particularly in the case of those States which did not collaborate in preparing the Convention in its present form, to remember that it is the result of a compromise, and that at first, as was proposed by certain delegations at the Peace Conference, it had a very much wider scope and was of much more importance. The intention at that time was to establish a kind of internationalisation of railways similar to that of

navigable waterways. It was considered that railway traffic was so important that private interests should bow before it. It was thought that certain lines were so important for international traffic that they ought to be reserved for it. Briefly the idea was to internationalise certain main lines. This idea has been abandoned.

The last remains of this idea of internationalisation, which consisted in obliging certain States to carry out certain work, even if not necessary for these States, have now been abandoned, and to-day we find a Convention which has an entirely general scope because it is to be applied all over the world. On this subject we share the opinion of the Italian Delegation in considering that the present form of the Convention on Railways is too general, and in our amendment we suggest certain modifications which would have the effect of defining to a certain extent the obligations to be imposed by the Convention.

I will return to the question of details in Committee; and here I will only remark that, within the sphere of the Railways Convention, we have clearly seen that the question of transport could neither be dealt with nor settled from a world standpoint. There are indeed certain questions which, while remaining international, must yet be treated in a more detailed manner and within a more restricted sphere. In short, where railway questions are concerned, we are compelled to regard the application of principles in a narrower light. In other words, we consider that the General Convention should envisage the conclusion of certain individual conventions of a special character according to their sphere of application, which will be more restricted.

The statement of the Delegate of Brazil would seem to prove precisely the truth of our claim. It is impossible to draw up a world-convention on railways unless general principles are adhered to. A technical and detailed convention, if it is to be of a practical nature, must be limited to certain restricted territorial groups. In my opinion we should introduce certain main principles into the General Convention, we should retain a certain nucleus, and afterwards conclude conventions more limited in scope,—European conventions, American conventions, in short, conventions of a special nature and limited in application. These conventions would be in part concluded between the States themselves.

I should like to turn here to a question which the German Delegate has touched upon,—the question of certain great unions which existed in Europe before the war, and which, while restricted, as their names will show, nevertheless were of much more general application. I refer to the union of the administrative bodies of German railways, which before the war included not only the German administrations, but also the Austrian, Hungarian, Luxemburg, and Netherlands administrations. Unless I am mistaken, it even included a Russian railway, the Warsaw-Vienna railway and the Belgian and Roumanian railways. This union served as an example, as a model, for a still greater union, called the Union of Administrations, which adhered to supplementary conditions,—to uniform regulations. I have no hesitation in saying that this union rendered great service to the development of international traffic. But there can be no doubt that the situation has changed since the war. There can be no doubt that this union will have to be replaced by a still larger one,—a European union. We should like the General Convention to provide a basis, a centre, for the formation of railway unions which, in our opinion, should have certain relations with the League of Nations and its organisations. We hope that association of this kind will arise through the force of circumstances to replace the union of which I have spoken by a more general and more extensive system.

In conclusion, I venture to refer once again to the technical difficulties which railway traffic has encountered since the war, and which—among other things—renders the literal application of the Bern Convention impossible. One of the chief of these difficulties is the great shortage of wagons throughout the whole of Central Europe. I venture to add that this shortage is altogether artificial. The Czecho-Slovak Republic itself has had to suffer much in consequence of it. As I pointed out in the first speech which I had the honour to deliver here, Czecho-Slovakia did all within her power to consolidate her railway traffic immediately after the war, and can assert with pride that her railways are now in a condition almost equal to that before the war. Allow me to say that the Czecho-Slovak Republic has done its utmost to build new wagons and to maintain in working order the wagons of the common stock which worked on

the territory of the former Austro-Hungarian Monarchy. But these efforts have been paralysed by a fact which is not in consonance with common sense as regards traffic, —the failure to carry out the repartition of the rolling-stock of the former Austro-Hungarian Monarchy. This may seem entirely a question of detail, but it is on this question that the restoration of Central European traffic depends. It is absolutely necessary, in the common interest not only of the States which have newly arisen on the territory of the former Austro-Hungarian Monarchy, or which have increased their territories at the expense of this monarchy, but also in the interests of the whole of Europe, that this allocation should take place as soon as possible.

There is a very penetrating remark in the admirable statement of Sir Francis Dent. Sir Francis asserts that this state of affairs is a complete negation of the aims aspired at in the Covenant of the League of Nations (1). This remark is very true. It is essential that the present situation should be remedied, and it is due to the energetic efforts of Sir Francis Dent alone that part of this work has been achieved. But I cannot insist too often on the necessity of arriving at a solution of this question as soon as possible, even though it appears to be entirely a question of detail. It is none the less true that I consider it essential for the re-establishment of the economic equilibrium of traffic in Central Europe and indeed in the whole of Europe.

With these remarks I return to the Convention itself, and I desire to declare that we accept the principles of it, while proposing certain amendments for the purpose of defining more exactly some of its provisions, and also of finding a nucleus for the formation and conclusion of more restricted and special conventions. As I have said, I will enter into details within the Committee itself, and finally, I express the firm hope that we shall prepare a Convention which will contribute very materially to the development of international traffic.

The PRESIDENT (speaking in French). — We thank M. Lankas for his interesting statement. No more speakers have handed in their names, and the general discussion is therefore at an end.

LIST OF MEMBERS OF THE COMMITTEE ON RAILWAYS

I will read to the Conference the list of the members of the Committee on Railways.

Albania	MM. Midhat Frasheri.
British Empire	G. L. Colvin.
Austria	H. Reinhardt.
Belgium	Hanrez.
Brazil	Barboza Carneiro.
Bulgaria	Bochkoff.
Chile	Hernau Edwards.
China	M. C. Hsu.
Czecho-Slovakia	Dr. Lankas; Substitute, M. Koller.
Denmark	MM. Haarlow.
Esthonia	Walter Rosenthal.
Finland	Rolf Thesleff.
France	Loiseau.
Germany	Professor von der Leyen.
Greece	MM. Politis.
Guatemala	Galvez.
Haiti	Luis Maria Soler.
Honduras	Galvez.
Hungary	Walther.
India	Sir Louis Kershaw.
Italy	M. Paolo Bignami; Substitute, M. Girolamo Sinigalia.

(1) See p. 3.

Japan	MM. Satake.
Latvia	Charles Blodneeks.
Lithuania	V. Sidzikauskas.
Luxemburg	Lefort.
Netherlands	Kalff.
Norway	Havsberg.
Panama	E. Hazera.
Paraguay	Velasquez.
Persia	Mirza Hussein Khan Alai.
Poland	Wielovieyski.
Portugal	A. Freire d'Andrade.
Roumania	G. Caracostea.
Serb-Croat-Slovene State . . .	R. M. Avramovitch.
Spain	Ramon de Montagut.
Sweden	Nils Ahlberg.
Switzerland	Carlin; Substitute, M. Wirz.
Uruguay	Benjamin Fernandes y Medina.
Venezuela	Dr. Simon Planas Suarez.

The meeting adjourned at 1.15 p.m.

PART II

DISCUSSION IN COMMITTEE

(SIR FRANCIS DENT IN THE CHAIR)

OF THE

DRAFT CONVENTION

ON THE

INTERNATIONAL REGIME OF RAILWAYS

FIRST MEETING OF THE COMMITTEE ON RAILWAYS

(Friday, April 1st, 1921, at 9.30 a.m.)

CHAIRMAN'S SPEECH — DISCUSSION OF ARTICLE 1 — DISCUSSION OF ARTICLE 2
DISCUSSION OF ARTICLE 3

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

CHAIRMAN'S SPEECH

The CHAIRMAN. — I will not detain you more than two minutes. I consulted a number of delegates yesterday, and found they agreed that it would be desirable for M. Étienne, the Director of the Central Office of International Transport, to attend the meetings of the Committee; I think the Committee will agree.

Some of the articles of the Draft Convention now before us are common to those of other Conventions, and I propose that the Rapporteur and Assistant-Rapporteur be instructed to see that the Drafting Committee make the same changes in these articles as in those of the other Conventions. If you agree, I think we might defer consideration of the Preamble until we have discussed the articles.

I would use the minute I have left to give—what perhaps I am not entitled to do—a word of advice to the Committee. We are here considering a Draft Convention which it is hoped all the States will accept. It is clear, therefore, that it must be wide enough to meet all requirements. It cannot be as tightly drawn as some of the existing Conventions. Let us leave it for existing and future Conventions to be more precise. Railways are so interdependent that I have no doubt that in future they will agree to tighten the terms of their agreements. A coat to cover all must be too large for some.

DISCUSSION OF ARTICLE 1

As discussion of the Preamble is postponed, I propose that we pass to Article 1, which I will read.

Treatment of Goods, Mails and Postal Parcels.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

The first amendment to Article 1 is that of the Roumanian Delegation, which simply brings this article into accord with the Transit Convention. I will read this amendment:

Article 1 and following articles: Delete throughout the words *mails and postal parcels.*

M. LANKAS (Czecho-Slovakia; speaking in French). — The Roumanian Delegation desires to omit the words *mails and postal parcels,* as was done in the Transit

Convention. I have to formulate certain reservations with regard to this proposal, and for thi purpose I should like to have private conversations with some of the delegations. In the meantime I oppose the deletion of the words.

M. HANREZ (Belgium; speaking in French). — The text adopted here should be in complete harmony with that adopted for the Transit Convention. If the words *mails and postal parcels* are omitted in one place they must also be omitted in other places; any other course would be illogical.

M. LOISEAU (France; speaking in French). — I entirely agree with the view of the Belgian Delegate,—there would be a risk in not keeping in strict accordance texts which deal with the same subject.

M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me to remind you that the question of mails and postal parcels has not yet been finally decided by the Conference (1), only by the Plenary Committee. Any delegation can therefore bring this point up again; I myself intend to do so in plenary meeting.

I would next venture to observe that there is a very great difference between the Convention on Freedom of Transit and the Railways Convention. The latter applies not only to transit, but to all other kinds of traffic,—for instance, import and export traffic between two States. It is therefore possible and even necessary to consider this Convention from a different point of view from the Convention on Freedom of Transit.

M. POLITIS (Greece; speaking in French). — The question, as I understand it, is as follows : If we delete the words *mails and postal parcels* from the Transit Convention we should also delete them from the Railways Convention.

M. LANKAS (Czecho-Slovakia; speaking in French). — I do not share my colleague's view. Even if the words *mails and postal parcels* are deleted from the Transit Convention, there is no absolute need to omit them here as well. The circumstances are quite different. If I remember aright, the Madrid Convention only deals with the transit of mails and postal parcels. I would point out that in the Railways Convention we are dealing not only with transit, but also with import and export traffic, which is a very different matter. This fundamental difference between the two Conventions was very forcibly brought out in the debates.

M. LOISEAU (France; speaking in French). — If I remember aright, the Madrid Convention also applies to traffic other than transit traffic; the objection, therefore, holds good. Mails and postal parcels were reserved to be dealt with by the Madrid Convention. It was for this reason that we deleted the words from the Transit Convention; it is for the same reason, and not because there is a distinction to be made between transit and ordinary traffic, that they ought to be excluded from the Railways Convention as well. Furthermore, I think I am not the only one to hold this opinion.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is true that without railways there would be no postal parcels carried. Nevertheless, having decided in the Transit Committee, on the advice of experts, to delete the offending words, we must be logical. In order to be clear on this point ourselves, we would merely ask the Czecho-Slovak Delegation the reasons for its action. Let M. Lankas tell us his reasons, his misgivings, his fears. We cannot vote yes or no without being given the reasons.

M. LANKAS (Czecho-Slovakia; speaking in French). — My intention was not to lose time, and for that reason I desired the question of mails and postal parcels to be reserved. Indeed, I said that I would explain my views to certain delegations in private conversation.

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(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 30-35.

M. LOISEAU (France; speaking in French). — That is the reason for which we have come here,—to explain our views and to come to an understanding.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would beg the Committee to postpone this question; we shall not discuss the whole Convention in a single meeting.

M. LOISEAU (France; speaking in French). — I should hope not.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would beg the Chairman, then, to reserve the question of mails and postal parcels until a little later on.

M. REINHARDT (Austria; speaking in French). — I should like to know whether the Madrid Convention also applies to railway traffic other than traffic in transit. Can any delegate give us authentic information on this point? If that Convention applies to railway transport in general as well as to transit, I do not think that postal parcels can be dealt with in one Convention and not in the other.

M. Mirza HUSSEIN KHAN ALAI (Persia; speaking in French). — I was at Madrid and signed the Conventions. They applied both to transit and to transport by rail, and did not concern transit exclusively.

M. SINIGALIA (Italy; speaking in French). — Besides, mails and postal parcels are not mentioned in the Waterways Convention.

The CHAIRMAN. — In view of the observations of the Persian Delegate, will M. Lankas now agree to the words *mails and postal parcels* being provisionally omitted?

M. LANKAS (Czecho-Slovakia; speaking in French). — I ask that a vote be taken.

The CHAIRMAN. — We will take a vote, then, on the provisional omission of the words *mails and postal parcels.*

M. CARLIN (Switzerland; speaking in French). — I should like to point out that all our decisions here are provisional. I therefore suggest that we should vote on the actual, and not merely provisional, omission of the words. If the Delegate of Czecho-Slovakia does not agree, he can always bring the question up again in Plenary Conference. He has an unquestioned right to do so. Otherwise, I believe our work will be anything but speedy. Indeed, I think that if we continue to discuss the Draft Convention in this way,—if we stop half an hour over every secondary question, we shall never finish. I am therefore very happy to see that a vote is about to be taken. Let me repeat that decisions taken in Committee are always of a provisional nature; they are taken subject to their acceptance by the Conference. I would therefore propose that the vote should be taken on the omission of the words *mails and postal parcels.*

The CHAIRMAN. — Is the Committee content that we should vote on the Roumanian amendment in the form in which it was read? I will put it to the vote.

The Roumanian amendment was adopted by 24 votes to 3.

M. SINIGALIA (Italy; speaking in French). — I will explain briefly the amendments which the Italian Delegation has the honour to propose. We should like a somewhat more positive wording adopted for Articles 1 and 2. Indeed, we said this when we made our statement at the general discussion (1). The States signing the Convention should enter into a rather more positive form of undertaking. Article 1 says :

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards

(1) See p. 10.

the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

These are provisions which are usually applied in all international railway relations.

With regard to Article 2, its provisions have already formed the subject of arrangements and conventions between different railways. We can therefore say that there is nothing new in the stipulations provided for in these two articles, and the Italian Delegation thought that it would be a retrogression from present conditions were we to confine ourselves to recognising these principles as highly desirable. For these reasons my Delegation proposes the amendment now before you.

M. RAMON DE MONTAGUT (Spain; speaking in French). — In the general discussion (1) the Spanish Delegation explained the conditions of railway operation in Spain, and therefore, to its great regret, it is unable to accept the wording proposed by the Italian Delegate. The undertaking to put in force immediately the measures which are recommended in Article 1 would involve special conventions with the other European systems, the preparation of which presents legal difficulties for the Governments and economic difficulties for the Companies; the solution of these problems requires time.

The Spanish Delegation is compelled, then, to keep within the limits of Article 1, as worded in the *Green Book*. The Spanish Government, for its part, will do its best to meet the wishes of the Conference as soon as possible by adhering to the Bern Convention.

Mr. G. L. COLVIN (Great Britain). — The British Delegation is more or less in agreement with the Spanish. We think that the expression *agree to adopt* is a little too rigid. It must be remembered that this article applies not only to European railways but also to those of other continents. The article lays down as desirable the adoption of a system of single waybills. Probably that is desirable between different countries of the same continent, but I do not know whether it would be altogether desirable, or even practicable, between railways in different continents—for example between Indian railways and those of Western Europe or South America. In these circumstances I should prefer a less rigid form of words than *agree to adopt*. I suggest the addition of the words *or encourage the adoption of*. The sentence would then read : *The High Contracting Parties agree to adopt, or encourage the adoption of...* I should be glad to know whether the Italian Delegation agrees to this addition.

M. SINIGALIA (Italy; speaking in French). — In the first place, I should like to tell the Spanish Delegate that the proposal of the Italian Delegation is in no way meant to impose the adoption of the provisions of Article 1 on all railways throughout the world.

The Italian Delegation is quite aware that difficulties stand in the way of the general adoption of the single waybill, but it considers that its amendment, which said : *... the High Contracting Parties agree to adopt... all measures which will facilitate the international transport of goods,...* would prove acceptable.

I think that noone will disagree with this view. With regard to the second part of the article dealing with the single waybill, I would like to point out that the wording of the Draft disposes of the difficulties which have been raised. The text reads : *more particularly as regards the through transport of goods whenever possible by a single waybill.* The expression *whenever possible* expressly refers to the case in which this single waybill could not be made out.

This is the explanation which I desired to give with regard to the Italian proposal. May I add that I have no objection to the amendment proposed by the British Delegation, so long as that amendment leaves intact the principles laid down in the article?

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(1) See p. 17.

M. LANKAS (Czecho-Slovakia; speaking in French). — As you know, the amendment we have proposed (1) has the same object as the Italian amendment. I beg that you will carefully examine our proposal, which is supported by strong reasons. I agree with M. Sinigalia. It appears to me quite natural, when speaking of railways, and an international regime of railways, not merely to express a recommendation to the effect that every effort should be made to facilitate international transport.

M. POLITIS (Greece; speaking in French). — We agree on that point.

M. LANKAS (Czecho-Slovakia; speaking in French). — If ever an undertaking ought to be entered into,—an undertaking to which incidentally, in view of the reservations contained in the article, we should be bound in honour—it should be now, when a Draft Convention on the International Regime of Railways is before us. This seems to me to be so obvious that I am surprised to see the Committee wasting valuable time discussing it. All the States of the world are undoubtedly agreed to undertake to adopt *all measures which will facilitate international transport.* We must admit that the real international traffic, that which concerns the public at large, has met with certain difficulties up to the present. But on the other hand the article which is now before us contains so many reservations that delegations can accept the form *undertake to adopt* without the least anxiety.

I should like to make another small reservation; I should prefer *undertake to adopt measures which will facilitate international transport,* deleting the word *all.*

I do not think the anxiety expressed by the Spanish Delegation is justified. Should this De egation enter into the undertaking of which I have spoken, this would not imply that its Government was forced to alter the gauge and to take a number of other like measures. Article I expressly provides for the transhipment of truckloads when such an operation cannot be avoided. My remarks with regard to the Spanish Delegation also apply to the remarks made by the British Delegation. To sum up, I think that all the States represented can accept this formula : *undertake to adopt measures which will facilitate international transport.*

M. LOISEAU (France; speaking in French). — In spite of the enthusiasm with which the Delegate of the Czecho-Slovak Republic has defended his case, I regret that I cannot share his view. On the contrary, I am of opinion that we should keep the wording as it stands in Article I, because I think it is difficult to undertake beforehand to adopt measures with the details of which we are unacquainted. All that we can and should do is to show our readiness to encourage and facilitate all possible progress in connection with international passenger and goods traffic. The carrying out of the measures must be left to the railway companies with a view to the conclusion of agreements between them. Lastly, let me once more express my conviction that it is wiser and equally practical to keep to the form which has been criticised.

M. RAMON DE MONTAGUT (Spain; speaking in French). — I support the views expressed by the French Delegate.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think I need only recall the general discussion and the words of our Chairman, Sir Francis Dent, and also the *Green Book* report, to justify my amazement, or at least my surprise, that questions which have to all appearances been settled should now once more be brought up for discussion.

I think two things are being confused,—the principles already laid down in the Transit Convention and those underlying the General Convention on Railways. This question was discussed at length at the Commission of Enquiry in Paris, and it was thought that there would be no need to make this General Convention, which deals with a special subject depending on administrative bodies and on the States themselves, were it not that it was to act merely as a kind of complement to the Conventions on Transit and on Waterways, and, *quâ* complement, that it would be most

(1) For text of Czecho-Slovak amendment see p. 36, footnote.

regrettable for it not to exist. We were thus unanimous in recognising that this general Convention should serve as a framework which would enable the administrations to continue their work, taking into account existing institutions. While on this subject may I read you a few lines of the *Green Book* (1) :

> In its pages are contained the elements of the line of action to be followed with regard to railways by the general communications organisation of the League of Nations, and of the new and specialised code gradually to be built up as a result of progressive understanding between States, and of that slow but sure fusion of their *inter se* agreements, which is so eminently desirable. It has not been considered possible to go further.

If therefore we wish to accomplish any useful work, let us keep to what has already been said on this matter, and follow the very sensible advice of our Chairman.

If the proposal of the Delegate of Italy were adopted, it might give rise to difficulties. All the drafts have already been submitted to the various Governments, which have examined them and perhaps already approved them. If we make further extensive modifications, we shall not know where we are. On the other hand, the proposal of the British Delegation to add the words *or encourage the adoption,* would come near to causing us to weaken seriously the original meaning of Article 1 as drafted. Moreover, the scope of application of this article includes what the Italian and British Delegations had in mind when they made their proposals.

I would therefore ask the Committee to keep to the text of Article 1 as it stands. Agreement can surely be reached on this point with the French, Spanish and British Delegations. I understand that the last-mentioned does not propose an amendment to this article; it merely proposes an addition to it, should the Italian amendment be adopted. This would be regrettable; the article would be preferable in its present form.

M. POLITIS (Greece; speaking in French). — I entirely agree with the Italian and Czecho-Slovak Delegations, both for the reasons which they have explained and for another which, in my opinion, is even stronger. It is impossible to conceive of a Convention in which no engagement is undertaken. I have never seen a contract or a convention which was a mere expression of desire. If no more than wishes are expressed, there will be no sanctions; all the articles which follow,—nay, the whole Convention, will be rendered nugatory. Does the Conference desire to make a Convention or does it not? That is another question. In my opinion the Convention should have been planned in a totally different manner, in order to allow of the development of international transport; as it is, we are providing for nothing more than what is already taking place in the railway world.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I reply to the accusation made against us by our Serbian colleague when he said that we ought not to raise a question already settled by the Commission of Enquiry at Paris?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is not an accusation.

M. LANKAS (Czecho-Slovakia; speaking in French). — I should like to point out to the Serbian Delegate that the Czecho-Slovak Delegation took the same attitude in the Paris Commission as to-day; we made a statement on the International Regime of Railways before the War and on what we desired and recommended on the subject. Our present attitude is consistent with that taken up by us and by several other Delegations at the Commission of Enquiry.

Moreover, at the time of the discussion of the Transit Convention, several delegations which had not made any reservations at the Commission of Enquiry at Paris ceased to adhere to what was done at Paris. Having said this, I would like to give my strong support to the Italian proposal, which we will accept as our own, and which I had weakened by deleting the word *all.* I entirely agree with the view of the Greek

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(1) See p. 209.

Delegate. I do not see how it is possible to make a Convention which should be limited to saying that certain things appear *desirable*. I do not see how such a method can be adopted in connection with means of transport so important as railways. I am afraid that a Convention of this kind would appear almost ridiculous.

I make all reservations as regards the Convention itself. If this Convention is to contain nothing but recommendations and statements of fact I wonder, on consideration, whether it would not be better to give it an entirely different form.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I have listened today with great interest to the Delegates of Czecho-Slovakia and Greece, as I listened with interest yesterday to the observations of the Italian Delegation. It would be very difficult for Brazil, and probably for nearly all the South American countries, to accede to a Convention which was not drawn up on very general lines. We must take into account the fact that this Convention is to be applied throughout the world; but the regime of the railways of the countries is still too far from uniform to enable all to bind themselves categorically to take certain steps, when theses steps depend in the first place on the political situation, in the second on the economic, and finally on the financial situation. In our opinion, then, it would be better to adhere to the scheme proposed in the *Green Book*.

I support the view of the French Delegation, and I think that, in order to satisfy the Greek and Czecho-Slovak Delegations, this Convention might be changed to a series of Recommendations; as a matter of fact it contains nothing but recommendations.

M. POLITIS (Greece; speaking in French). — That is quite true.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — There are some countries which can only accept recommendations, and which cannot undertake to fulfil categorical obligations. Very well; in that case they could promise to take such measures as they may think suitable, but they will not be able to fix any time. They may say : —We will first conclude agreements with our neighbours, and we shall gradually succeed in concluding conventions which will have the same results, but for the moment we cannot undertake binding engagements on the terms proposed by the Italian and Czecho-Slovak Delegations. Speaking candidly, I think it would be preferable to change the Convention into a series of Recommendations.

M. WINIARSKI (Poland; speaking in French). — I will not remind you of the technical and economic reasons which may be adduced in support of the present form. I am very sorry that I do not agree with the Delegate of Italy. I will venture to say that if we substitute the words *undertake to* in the present text, these words will not be in keeping with the tenor of the engagement. An engagement is something definite and rigid, whereas what we are undertaking here is something vague and general. We speak of *facilitating as far as possible...*, of *measures which will facilitate...*, *measures which will allow...* All this is vague. I think that we should either make a Convention with definite engagements, or—and this would be preferable—change the Draft Convention to a Draft Recommendation. I have seen Conventions containing rules of a general kind such as those now proposed to us, but I do not see any objection to supporting the proposal of the Brazilian Delegate.

M. LOISEAU (France; speaking in French). — The statements which the Delegates of Czecho-Slovakia and Greece have made, and the very timely speech of the Brazilian Delegate, appear to me to have brought the discussion into a sphere somewhat wider than that of the text of Article 1. It has been said that we are discussing a convention; a convention implies engagements, and you refuse to subscribe to engagements properly so-called, in accordance with the proposal of the Italian Delegation.

Before sitting on this Committee I was struck, as were many of you, by the strange

terms in which the text of the *Green Book* is couched. The first three articles are nothing but mere recommendations; it is only in Articles 4 and 5 that we reach the real subject of the Convention, and these will probably be sharply discussed. I did not give expression to this thought for two reasons. In the first place I wished to be respectful as far as possible to the contents of the *Green Book,* and in the second place I desire the best possible use to be made of the Committee's time. I recently spent forty-eight hours on the Waterways Committee, and I witnessed the delays which are inevitable when an agreement has not been reached as regards the point of departure. Having confessed these scruples, I should like to say that if there is really an element in this Committee prepared to admit that it would be much better to abandon the idea of the Convention and only to make recommendations, not only do I see no objection to this, but I am ready to subscribe to a proposal to this effect.

M. SINIGALIA (Italy; speaking in French). — I ask pardon for having raised this discussion, which I did not think would occasion much loss of time. It has been said that great anxiety was caused by the engagements which would be entered into here without their exact purport being known. I would point out that the engagement which I proposed only concerns Article 1, and I do not see anything in this article which can give rise to the least anxiety. According to my wording of Article 1 the High Contracting Parties would be required to take measures to facilitate international traffic. I think no country can refuse that. The second part of the article deals with the single way-bill; that is the most important question, but though I can understand there being some hesitation on the part of countries which have not signed the Bern Convention, I am astonished that objections should be raised by the representatives of States which have acceded to this Convention. If definite engagements have been undertaken, in virtue of the Bern Convention, to adopt a single waybill, I cannot understand why there should be any hesitation to make this way-bill universal. In any case that has nothing to do with my proposal; we are all fully aware that the single way-bill is not an obligation imposed on the consignor, but a facility offered to him by the railway. He is simply told, " If you desire a single way-bill, take it; if not, leave it." I think therefore that all opposition should disappear even as regards the single way-bill.

The other questions are *treatment of goods during the journey, transhipment when this operation is unavoidable.* We have here an absolute fact. When transhipment cannot be avoided, measures must be taken for it to be done in the best way. Finally we have the question of the establishment of tariffs and the conditions of their application, but we shall discuss that later. If we do not accept the proposal of the British Delegation, which goes far to allay the fears which might be felt as regards undertaking engagements, I do not see any obstacle to our retaining what is laid down in Article 1 in the *Green Book.* All that we need is something—I will not make a definite proposal, and I merely draw the attention of the meeting to this point—something which would give our text the appearance of a real convention, instead of leaving it in the vague form of a mere expression of desire.

M. LANKAS (Czecho-Slovakia; speaking in French). — I support the Italian Delegate's view as regards the question of principle, but as regards the form which shall be given to our Convention I share the view of the French Delegate, who rightly averred that the most important point of the Convention is not in Article 1 but in Article 4. This article, by its use of the future tense, contains certain obligations. I think it wou d be premature for us to take a decision now on the question as to what form we should give to our work. I think that we should continue to discuss the other articles and decide at the end as to the form to be given to our Convention. I should also like to second the Italian proposal, which is not so far-reaching as ours, since we wished to use the word *undertake.* I do think that in the first article at least we should use some word which would give it the appearance of a convention. Perhaps the Drafting Committee could find a word to meet our wishes.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I never spoke of an accusation (1). I simply referred to what was said and done in accordance with the *Green Book*. I will read the passage (2) :

As stated above, the Draft Convention on the International Regime of Railways was adopted unanimously, without reservation upon any point.

I believe that is clear, and I consider that it means much. As regards the fundamental question raised here I understand the Italian Delegate has withdrawn his proposal.

M. SINIGALIA (Italy; speaking in French). — No, we have not.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — You did withdraw it, and you merely asked to add something which would give this Convention the character of a general convention. In this matter I support the view of the French and Brazilian Delegates. We shall see at the end what form to give our text. I think that the delegates who raised this question will probably regret having done so, as they thereby run the risk of reducing this General Convention to the level of a mere recommendation. For this reason I repeat : Never ask too much for fear of obtaining too little. We must keep to the Draft in its present form and to the advice of our Chairman. It has also been said that this Convention claimed nothing more than to be a framework into which all the Conventions to be concluded in future should fit. As we have sufficiently discussed Article 1, I venture to ask the Chairman to put the amendment to the vote.

M. LOISEAU (France; speaking in French). — One word only; I am in complete agreement with M. Laukas and M. Avramovitch as to continuing the discussion and reserving until later the question of the form to be given to our decision.

M. HANREZ (Belgium; speaking in French). — I think that the questions submitted to us are so obscure and complex that we cannot possibly bind ourselves to-day in any way as regards the conclusions at which we arrive. This Convention is a guide which points out to us the line we should take in examining the questions before us. We may possibly be asked why we have deviated from accepted principles. But no administrative body could decide questions of such importance at a moment's notice. I ask then that Article 1 should be retained as drafted. If, however, we wish to change this Draft Convention into Recommendations, I am quite prepared to do so later; but as regards undertaking an engagement, there can be no question of that for the time being.

Mr. G. L. COLVIN (Great Britain). — As there seems to be a considerable body of opinion in favour of the wording of the article as it stands in the *Green Book*, I am quite ready to withdraw my amendment in favour of the original text. I might point out that although the wording at the beginning of Articles 1, 2 and 3 is of a somewhat general nature, the words at the beginning of Article 4 provide for the establishment of special Conventions which are intended to lay down precisely the necessary measures to be taken to carry out the principles of Articles 1, 2 and 3.

The CHAIRMAN. — As no one else asks to speak, I will put to the vote the first part of the Italian amendment.

The amendment was rejected by 23 votes to 4.

M. HANREZ (Belgium; speaking in French). — Then we keep the article unchanged?

M. RAMON DE MONTAGUT (Spain; speaking in French). — That is to say that we keep the *Green Book* text?

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(1) See p. 32.
(2) See p. 210, last paragraph.

The CHAIRMAN. — The first part of Article 1 remains unchanged at present. There is a German amendment which I will read :

Add after the words *whenever possible* the words *by a single transport code;* the text would thus read : *whenever possible by a single transport code and a single way-bill.*

M. von der LEYEN (Germany; speaking in French). — Allow me to explain in a few words the reasons for our proposal. In order to facilitate international goods traffic, it is absolutely necessary that the transport code should be the same for all railways taking part in this traffic. The single way-bill is only a document marking the existence of this uniform code. For this reason the way-bill, under the terms of Annex 27 of the Bern Convention, contains the following clause :

You shall receive goods... under the conditions laid down in the International Convention...

that is to say, the regime of the uniform code of the Convention. In order to assure the same treatment for traffic which is not subject to the Bern Convention, uniform laws concerning transport are essential. I think that the Czecho-Slovak amendment to Article 1 is to the same effect (1). This amendment contains the words *whenever possible by a single way-bill, subject to the same obligations* (uniform consignment note). That is the purport of the German amendment, and if you prefer the Czecho-Slovak amendment I am prepared to support it.

M. LANKAS (Czecho-Slovakia; speaking in French). — If we admit the principle, it will be well to leave the Drafting Committee to choose the most suitable and useful form. The question is whether we are to indicate clearly that we recognise as desirable that all States in a position to do so should adhere to the Bern Convention, that the scope of this Convention should be widened as regards the number of States adhering to it, and that the greatest possible use should be made of single way-bills, subject to the same obligations, that is to say to a uniform consignment note. That would be a most desirable and even necessary declaration, because what the text at present states as regards through traffic—*whenever possible by a single way-bill*—does not indicate with such clearness that what is meant is a *uniform consignment note and a single transport obligation.*

Mr. G. L. COLVIN (Great Britain). — I am afraid I must oppose this amendment. I have again to point out what is sometimes forgotten, namely, that this particular Convention applies not only to Europe but throughout the whole world. To say that you must have a single transport code all over the world simply means that a large number of countries will not sign the Convention. I think it is unnecessary to add the words suggested by the German Delegation. As regards the Czecho-Slovak amendment, I have not yet had time to consider it, and frankly, I do not quite know what it means.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I explain to the British Delegate that the Czecho-Slovak amendment states exactly the same thing as the German amendment? It is understood that through traffic is carried on with single way-bills. It would seem desirable that special Conventions should be concluded establishing a single transport contract. But conventions of this kind may very likely be concluded even in America, and the adherents of the Bern Convention may become

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(1) The text of the Czecho-Slovak amendment reads as follows :

"Delete this Article and substitute the following wording :

Treatment of Goods, Mails, and Postal Parcels.

"Without prejudice to the provisions of the Convention on Freedom of Transit, the participating States undertake to adopt, on the railways placed under their sovereignty or authority, all measures which will facilitate international transport of goods, mails and postal parcels, more particularly as regards the through transport of goods, whenever possible by a single waybill, subject to the same obligation (uniform consignment note), their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application."

more numerous. If the British Delegate does not wish to refer to the Bern Convention because it is at present not capable of worldwide application, I think he should feel the same scruple as regards the mention of through traffic. At present it is no longer possible to carry it on throughout the world. I think that the wording... *whenever possible by a single way-bill...* may easily be accepted for all States.

M. CARACOSTEA (Roumania; speaking in French). — I am an old railway man, and during the long time that I have spent in Transylvania I have had to make Conventions and carry on through traffic with Germany. I should like to be told the meaning of the term *single transport code.* The Bern Convention regulates every kind of traffic, and I cannot, therefore, understand these words, and I am sure that many of my colleagues will not understand them either. We have a single waybill in virtue of the Convention of Bern; I understand that. But, I repeat, I do not understand a *single transport code.* Does this mean something which is not referred to in the Bern Convention? If so, I am not sure whether I should vote for this amendment.

M. von der LEYEN (Germany; speaking in French). — The words *single transport code* are perhaps somewhat difficult to explain. When we speak of a single way-bill it is understood that if railways are concerned which are not subject to the Bern Convention, they must have come to an agreement as to the code governing their traffic. I think that the text of the Czecho-Slovak amendment explains our intention better than does our own, and I therefore support it.

M. CARACOSTEA (Roumania; speaking in French). — We shall examine it.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the German Delegate supports our proposal, allow me to explain our amendment in a few words, although the German Delegate himself has already explained it quite clearly. We should like traffic to be carried on as far as possible with single way-bills, and we should like international traffic to be regulated by international conventions, that is to say, as far as Europe is concerned, by the Bern Convention. This means that we wish the greatest possible number of States to accede to this Convention; as regards Europe, for example, it would be desirable for all the countries in which the Convention of Bern has not been applied to ask to become parties to it. Traffic with single way-bills would thus become possible, and would henceforth be subject only to a single obligation. I think that the Roumanian Delegate might see his way to support our view.

M. CARACOSTEA (Roumania; speaking in French). — According to what the Czecho-Slovak Delegate has said, all the countries which have not yet acceded to the Bern Convention must do so, in order that traffic should be carried on in the same conditions for all. But as regards countries which do adhere to the Bern Convention there is nothing to add. If this is what is intended by the Czecho-Slovak amendment, I will support it. This question does not concern those countries of Europe which are parties to the Bern Convention. If it refers to States on the other side of the Atlantic, to which the Bern Convention does not apply, it is understood that traffic should be regulated on a basis of equality for all, as the Bern Convention stipulates in regard to Europe.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wished to make it clear that the part which we have put between brackets does not apply to the text itself, but explains my meaning.

The CHAIRMAN. — Does no one else wish to speak? I understand that the German Delegate supports the Czecho-Slovak amendment. If the Committee agrees, we will vote on this amendment, which, let me remind you, consists in introducing into the article the words *subject to the same obligation.* We will vote only on the principle of the amendment, and will leave to the Drafting Committee the task of deciding the final text.

The amendment was adopted by 20 votes to 3.

M. SINIGALIA (Italy; speaking in French). — The words... *uniform consignment note* are to be omitted?

M. LANKAS (Czecho-Slovakia; speaking in French). — That was merely inserted as a guide.

The CHAIRMAN. — The Italian Delegation proposes to draft the end of Article 1 as follows : *the form of establishment of common tariffs and the method of their application.*

M. SINIGALIA (Italy; speaking in French). — I should like to say at once that this is merely an amendment of form. We have no wish to alarm the Committee. We must state definitely what should be done. The words *le mode d'établissement de tarifs* (establishment of tariffs) seems to me too vague. The Italian Delegation considers that it would be better to say *the form of establishment of common tariffs.* It is a question of the form which a common tariff should have,—its requirements, the classification of goods, the scale of rates according to countries, and so on. We must aim at giving a single form to common tariffs. The Italian Delegation also proposes to omit the words *their rates* and to allude only to the method of application. It considers that tariff rates should not be the subject of negotiations as regards the establishment of tariffs. The rates are generally those of the tariff scales in force within each individual country. We cannot then make recommendations on the subject of rates, as each country has a sovereign right to deal with this question independently.

M. HANREZ (Belgium; speaking in French). — I agree with the Italian Delegation.

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree with the Italian proposal as regards the substitution of the words *forme d'établissement* (*form of establishment*) for the words *mode d'établissement* (establishment), and the omission of the words *their rates.* As regards the word *common,* allow me to remind you of what I said yesterday. Through tariff rates are formed by the amalgamation of local tariffs, and as a result of the great diversity of local tariffs, considerable difficulties arise in establishing common tariffs. This diversity is much greater than is required by present conditions. The differences are so great that, in order to establish common tariffs, Commissions must sit for several months in order to find a basis for the amalgamation of tariffs. Great progress would be made if, in Europe and the other continents, the various administrations would make efforts to introduce more similarity in their tariffs. Amalgamation would thus be rendered easier. It is for this reason that I begged the Italian Delegation not to press for the introduction of the word *common.* I think it is most desirable that, even as regards the establishment of local tariffs, the needs of international traffic should be considered. We should therefore express a recommendation to the effect that States should make efforts in the direction to which I have referred.

The CHAIRMAN. — It would be well, I think, to ascertain the opinion of Colonel Étienne on this question.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I confess that I was a little surprised, on reading the end of Article 1, to see that the Convention dealt with tariff rates. The Bern Convention did not venture to touch upon this complex and difficult question. As you know, this Convention issued, as it were, from the regulations of a number of countries,—much less numerous, it is true, than those represented here. Allow me to read the provisions of two articles which appear in the Bern Convention. In Article 4, which deals with the validity of tariff regulations, we find that :

As regards international transport traffic, the Convention regarding the conditions for common tariffs of railways associations or unions, and also those of the tariffs of each individual railway, shall be valid in so far as they are not contrary to the Convention; otherwise they shall be considered as null and void.

As regards the basis upon which tariff rates are to be calculated, Article 11 reads as follows :

Transport rates shall be calculated in accordance with the tariffs legally in force and duly published.

This is reserved for the different contracting States. It then reads :

Any private agreement, having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally available to all under the same terms and conditions.

The Bern Convention thus leaves considerable latitude on this point and does not deal with tariff rates.

M. WALTER (Hungary; speaking in French). — I think that M. Lankas has made a slight mistake. The Italian Delegation does not require local tariffs to be made uniform. When speaking of direct transport and single waybills, it seems reasonable to avoid transhipment at frontier stations. The amendment of the Italian Delegation aims at establishing the form of direct tariffs, that is to say, of common tariffs. It is for this reason that I support the proposal.

M. SINIGALIA (Italy; speaking in French). — I will reply in a few words to M. Lankas' remarks on the addition of the word *common*, which we proposed. I fully share the Czecho-Slovak view. It would be most desirable for local and international tariffs to be made uniform. I am the more ready to say this because in Italy we are in the course of carrying out the operation to which he referred just now. I confine myself to speaking of common tariffs because we have before us a Convention which refers to the international and not to the internal regime of railways. Though I am prepared to satisfy M. Lankas' request, I do not think I can refer in this Conference to matters relating to the internal regulations of each individual country. International traffic, which is the subject of our discussion, is regulated only by common tariffs. I know that in certain cases the local tariff of several States should be applied to international transport; that does not imply the necessity of instituting uniform tariffs.

M. HANREZ (Belgium; speaking in French). — I support the Italian Delegate's view. I think, as he does, that there can be no question here of discussing the establishment of local tariffs. In order to avoid any doubt, it would be better, instead of *establishment of common tariffs,* to say *establishment of international tariffs.*

M. LANKAS (Czecho-Slovakia; speaking in French). — Perhaps I expressed myself badly. It is quite true that when we speak of international traffic, we are thinking particularly of common tariffs, but it is also true that a large part of international traffic is based on local tariffs.

M. HANREZ (Belgium; speaking in French). — Not always.

M. LANKAS (Czecho-Slovakia; speaking in French). — International traffic may be facilitated in two ways,—by the establishment of favourable common tariffs and by the unification, as far as possible, of local tariffs. Those delegates who represent railways will certainly share my view that the diverse character of local tariffs forms the greatest obstacle to the establishment of through tariffs. Before the War, Austria was on the point of making her local tariffs uniform with those of Germany in order to facilitate the establishment of through tariffs with that country. It was from this point of view that we spoke not of the establishment of common tariffs, but of the establishment of tariffs generally. In my view—and I hope it will be shared by the Committee—international traffic should be facilitated to the utmost possible extent by the unification of local tariffs; but I do not think there is any need to state this in Article 1. It might form the subject of a recommendation on the part of the Committee. If the

Committee accepts my view, we might simply keep the words *the establishment of tariffs*. The word *tariffs* applies both to common and international tariffs. We should adopt the text proposed by the Italian Delegation by omitting the words *their rates*.

M. WINIARSKI (Poland; speaking in French). — For the reasons stated by M. Sinigalia, I support the proposal to substitute for the word *common* the word *international*.

The CHAIRMAN. — Does the Italian Delegate agree to substitute the word *international* for the word *common*? It has the advantage of being easier to express in English.

M. SINIGALIA (Italy; speaking in French). — I accept the alteration, but I should like to make one more observation. I share M. Lankas' view. I am convinced that the standardisation of tariffs, both international and local, would offer great advantages, both for internal and international traffic, but I do not see—perhaps I have not expressed my idea clearly on this point—how it is possible, in an international Convention, to issue recommendations with regard to internal traffic. If the meeting thinks that it can do so, I shall not press for the addition of the word *common* or *international*. This, in my view, is a question of form, of regulation, but I have no reason to oppose M. Lankas' proposal.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I support the proposal of M. Sinigalia and that of M. Hanrez, subject, however, to the omission of the words *their rates*.

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree to the addition of the word *international* to the word *tariffs*, but I will return to my proposal later.

The CHAIRMAN. — I put to the vote Article 1, the last part of which reads as follows :

...the establishment of international tariffs, and the method of their application.

The article was adopted as amended.

DISCUSSION OF ARTICLE 2

I will open the discussion on Article 2, which reads as follows :—

Treatment of Passengers.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

The Italian Delegation has submitted an amendment.

M. SINIGALIA (Italy; speaking in French). — The amendment which the Italian Delegation proposed can no longer be supported; the question with which it dealt has already been decided in connection with Article 1 (1).

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(1) The text of the Italian amendment reads as follows :—
"Alter the beginning of Article 2 as follows :—
"Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties undertake to adopt all measures which will facilitate the international transport of passengers and luggage over the lines..."

The CHAIRMAN. — The Czecho-Slovak Delegation has proposed an amendment to Article 2.

M. LANKAS (Czecho-Slovakia; speaking in French). — In our amendment we are making a suggestion similar to that which we made to Article 1; the object of the amendment is to provide for the formation of conventions regulating passenger and luggage traffic. This convention already exists as far as Europe is concerned, but it has not been put into force. We ask that the words *subject to the same obligation* be added to Article 2.

M. SINIGALIA (Italy; speaking in French). — For the same reasons which were so ably stated by M. Lankas, I support the proposal to add to Article 2, after the words *through booking facilities*, the words *subject to the same obligation*.

The CHAIRMAN. — Would the Committee like to hear M. Etienne's views on this subject?

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I think it would be most useful.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — At the last plenary meeting I gave certain information on the subject of the draft International Convention on the transport of passengers and luggage which was prepared at Bern. I asked the Chairman to allow me to speak, in order to point out that in Article 2, which we are now discussing, there is no question of registration tickets for the international booking of luggage. The Draft Convention, however, includes in Article 2, a whole series of instructions on the luggage registration ticket. This consists of three distinct documents,—in the first place a counterfoil, to be retained in the luggage office, then a similar sheet for the luggage official, and, finally, a luggage ticket for the passenger. The wording of this luggage ticket would be extremely simple; it would consist merely of a carbon copy. When the counterfoil is written, the two other sheets are made out automatically. I think it would be well to mention the international luggage registration ticket, as we have done for the through waybill, because it is obvious that if a passenger wishes to travel with a through ticket, it would also be better for him to have a through luggage registration ticket, in order to avoid having to look after his luggage during the journey.

M. HANREZ (Belgium; speaking in French). — In order to meet the view stated by M. Étienne, would it not be well to add to this article the following words :—

In particular, such measures should comprise the establishment of services with through tickets and through registration of luggage...

The CHAIRMAN. — I propose that the meeting vote on M. Lankas' amendment, which consists of the introduction of the words *subject to the same obligation* at the end of Article 2.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am willing to support the proposal which has been made, but I should like to ask if these words *subject to the same obligation* are quite clear. What we mean is :—subject to the same obligation in every country.

M. LANKAS (Czecho-Slovakia; speaking in French). — In a certain number of countries.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the countries adhering to the Convention?

M. LANKAS (Czecho-Slovakia; speaking in French). — As far as possible. I think that your idea would be expressed by the addition of the words *as far as possible.*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Please note that I do not object to the proposal, but I think it must be made more precise, and I should like the Drafting Committee to take note of my remark. Moreover, I should like the words *the establishment of services with through booking facilities and through luggage registration tickets* to be used.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I think that the wording of the last part should be different from what you propose. We cannot at once speak of luggage registration tickets, because the text reads *as far as possible without change of carriage.* This is for passengers; the proposed addition could only come after the words *subject to the same obligation.*

M. SINIGALIA (Italy; speaking in French). — This is a pure question of drafting, with which the Drafting Committee could deal.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We might vote on the principle, and we should see later how the article is to be drafted.

M. LANKAS (Czecho-Slovakia; speaking in French). — The ideas which should be expressed are as follows :—*The establishment of services with through tickets, as far as possible without change of carriage, and with through luggage registration tickets.* That would be the first idea. The second idea would be *subject as far as possible to the same obligations.*

M. Walter ROSENTHAL (Esthonia). — This is only a question of drafting. The English text, for instance, contains the words *through booking facilities,* which can refer both to persons and luggage. I should like to see the Bern Convention mentioned in the final text.

M. COLVIN (Great Britain). — I personally cannot allow that all the countries which sign our Convention should be compelled to adhere to the Bern Convention; this Convention only applies to European countries, and there are certain countries outside Europe which could not accept all its provisions.

M. Walter ROSENTHAL (Esthonia). — I am quite aware that the Bern Convention only applies to Europe, but since it has been in existence, its results have been so excellent that it would be most desirable for similar conventions to be concluded in all the countries of the world. My idea is not to compel other countries to adhere to the Bern Convention, but only to show how desirable it would be that similar conventions should be concluded.

M. LANKAS (Czecho-Slovakia; speaking in French). — I think that the Delegate of Esthonia did not intend to make explicit mention of the Bern Convention, but only to allude to it. Moreover, there is no Bern Convention with regard to passenger and luggage traffic. It is only a recommendation. The Esthonian Delegate only wished to refer to it by using the words *subject as far as possible to the same obligation.*

M. Walter ROSENTHAL (Esthonia). — I accept that interpretation.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — In order to obviate any misunderstanding, I should like to point out that, in present conditions, the Bern Convention could not be applied throughout the world. It is designed solely with a view to rail traffic. This also includes train ferries or ferry-boats which act as extensions of the railways systems. This is the legal fiction of the continuity of railways. Thus traffic between the Scandinavian countries and Germany is regulated by the Bern Convention. The same applies to that carried

on on Lake Constance between Switzerland and Germany, and in Italy across the Straits of Messina. In all these cases there is no breaking of bulk or of continuity. For Great Britain the question is somewhat different, for with the exception of the ferry-boats used during the war no international traffic within the meaning of the Bern Convention is possible between the Continent and England. On the other hand, the Convention applied to the Siberian railways, and waybills were made out as far as Vladivostock.

I wish to be quite clear on this point. It may be said that the Bern Convention will be applied in spirit, but not otherwise; at the present time it cannot be applied to Europe as a whole, and still less to Asia and other parts of the world.

The CHAIRMAN. — I will read Article 2 as amended in accordance with the discussion which has taken place :

Treatment of Passengers.

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities and without change of carriage, as well as through luggage registration tickets, subject as far as possible to the same obligation.

I put the article to the vote.

Article 2 was unanimously adopted.

DISCUSSION OF ARTICLE 3

The CHAIRMAN. — I will read Article 3.

Rolling-Stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

The Spanish Delegation has proposed an amendment to this article. I will read it : Add the following words at the and of the article :

Without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types.

M. Ramon DE MONTAGUT (Spain; speaking in French). — The motive for our amendment is the fact that the gauge of the Spanish railways exceeds that of the ordinary continental lines by 23 centimetres. The Spanish Government cannot permit any compromise on this subject; the necessary reductions would involve enormous expenditure, and would occasion very great difficulties inherent in the work necessary to allow the circulation in Spain of foreign rolling-stock, with the exception of that of Portugal. The head of our Delegation explained this to you at length in his speech (1).

M. ROLF THESLEFF (Finland; speaking in French). — I think it is absolutely necessary that the Spanish amendment should be adopted. When I say this I am thinking of the railways of my own country, the gauge of which is wider than that of most other countries. Attempts have been made to calculate the cost of altering it, and the sum estimated was a very considerable one. Moreover, we consider that from an economic point of view it would perhaps be better for us to retain our present gauge, as the Russian railways have the same gauge. This similarity facilitates traffic between the two countries.

(1) See p. 17.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I entirely agree with the amendment proposed by the Spanish Delegation.

M. Walter ROSENTHAL (Esthonia). — Speaking on behalf of Esthonia and Latvia, I am very happy to support the Spanish amendment.

M. LOISEAU (France; speaking in French). — I think that the proposal of the representatives of Spain, Portugal, Esthonia and Latvia is fully justified. I personally am quite ready to support it. I should like to propose a slight change in the wording, in order to make the sentence a little more precice. Instead of the words *without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types,* I think that we might say :—

Without this implying any obligation upon two neighbouring countries to modify the essential characteristics of their tracks when they are different.

Mr. COLVIN (Great Britain). — I agree with what has been said, but I should like something to be added referring to the loading-gauge, because the tracks of two countries might be the same, but their loading-gauge might be totally different, and sometimes it might be as expensive to alter the loading-gauge as the gauge.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wish to state that I support the proposal of the Spanish Delegation. In order to hasten the progress of our work I withdraw the Czecho-Slovak amendment to Article 3. I will merely venture to make the following suggestion. Would it not be desirable to substitute the title *Interchange of rolling-stock* for *rolling-stock*? But we will discuss that question later.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think this is not merely a question of rolling-stock, but also of technical measures to be taken. Perhaps it would be better to say *Interchange of rolling-stock and technical provisions.* That title would include everything.

M. HANREZ (Belgium; speaking in French). — A request was made that the loading-gauge should be added, and this must be included also.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There is not only the loading-gauge; there are other important questions, such as weight of locomotives...

M. Ramon DE MONTAGUT (Spain; speaking in French). — The limit of load per axle.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think a general Convention should not include all that,—loading gauge, weight of locomotive and so on. The result would be an obligation to alter the whole superstructure in order to facilitate international communications. I do not think we can ask such a thing. It seems to me that it would be enough to say *including technical provisions.*

M. HAARLOV (Denmark; speaking in French). — We might add... *as far as possible.*

M. SINIGALIA (Italy; speaking in French). — I should like to point out that no undertaking is entered into in Article 3 any more than in the other articles. In these circumstances, I think that the misgivings felt by the Delegate of the Serb-Croat-Slovene State are dispelled...

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I have no misgivings.

M. SINIGALIA (Italy; speaking in French). — In my opinion, all the details which have been asked for are unnecessary. We are expressing desires. We shall see if it

is possible to meet them. If it is not, they will not be met. Of course if certain rolling-stock cannot pass over certain lines on account of its loading-gauge, no one will call for the loading-gauge to be altered. The title should therefore be defined more precisely. The technical provisions laid down in this article refer to the interchange of rolling-stock and to nothing else. I think that the article can therefore retain its present form, with the addition proposed by the Spanish Delegation, which I recognise as necessary, and also with the change in the title.

M. Walter ROSENTHAL (Esthonia). — I suggest that we should employ a more comprehensive term for the title of this article and use the words *technical provisions.*

M. AVRAMOVITCH (Serb-Croat-Slovene Delegation; speaking in French). — I agree with the Italian Delegation, since it is only a case of facilitating the reciprocal use and interchange of rolling-stock. Although it is desirable that further provisions of a technical nature should be introduced, in particular as regards braking and the unification and manufacture of rolling-stock, there is no question of that in this General Convention. I wish to state, therefore, that I am satisfied with the explanation that has been given.

The CHAIRMAN. — I will ask the permission of the Committee to say a few words, for in my capacity as a technical railway man I have made a close study of the question. I agree with the French and Spanish Delegations. If we insert a provision in this Convention dealing with changes of gauge, we incur the risk of allowing it to be thought that railway companies may be required to make any technical alterations of lesser importance. Everyone admits that an obligation of this kind cannot be imposed in respect of the exchange of rolling-stock. I would therefore suggest that we refer the question to a sub-committee to find a wording which would satisfy the Spanish Delegation and those delegations which support its proposal. The interests of all would thus be safeguarded and misunderstandings would be avoided.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I quite agree with you, but I should like to make a suggestion which would perhaps satisfy the Spanish and Portuguese Delegations. Even if we do not include a clause of this nature in the General Convention, could we not insert it in the Final Procotol? We should thus avoid the misinterpretation feared by the Spanish and Portuguese Delegations.

M. Ramon DE MONTAGUT (Spain; speaking in French). — Our amendment does not allude to the gauge. It reads as follows:—*without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types.* This wording includes loading-gauge, wheel-base and everything.

M. LANKAS (Czecho-Slovakia; speaking in French). — Contrary to the view of the Esthonian Delegate, it would be better to make the title of the article clear by using a term such as *exchange of rolling-stock.* We must remember that the measures to be taken to facilitate the reciprocal use and interchange of rolling-stock will not only be provisions of a technical nature, but will also involve conventions between States.

The CHAIRMAN. — I suggest that we form a Sub-Committee composed of the Delegates of Spain, France, the Serb-Croat-Slovene State, Great Britain, Italy and Esthonia; I would also ask M. Lankas if he would object to the postponement of the discussion of this proposal until this Sub-Committee has supplied us with a text.

M. LANKAS (Czecho-Slovakia; speaking in French). — Of course, the Sub-Committee will use as a basis the discussion which has taken place.

The CHAIRMAN. — It will consider the suggestions made by the representative of Czecho-Slovakia.

The meeting adjourned at 12.50 p.m.

SECOND MEETING OF THE COMMITTEE ON RAILWAYS

(Saturday, April 2nd, 1921, at 10 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 3 — NEW ARTICLE PROPOSED BY THE ITALIAN DELEGATION — DISCUSSION OF ARTICLE 4

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 3

The CHAIRMAN. — I will read the new Article 3.

Interchange of Rolling Stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

It it clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.

M. Loiseau, Rapporteur of the Sub-Committee, will now address the meeting.

M. LOISEAU (France. Rapporteur; speaking in French). — The Committee is aware of the circumstances in which this Sub-Committee was appointed to submit a definitive text for Article 3. The Spanish Delegate had proposed to add to the text of the *Green Book* a provision worded as follows : *without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types.* It was very properly pointed out that the word *obligation* was out of place, for no formal undertaking on the part of anyone is laid down in the body of the article; and as soon as there is no undertaking there is no obligation either. We therefore joined in the endeavour to find a text which would exclude the word *obligation,* and the word at which we arrived is that which has been read by the Chairman. We believed that this text would meet the wishes of Spain, which were also those of various other countries. On the other hand, we did not see fit to alter the title of Article 3 and confined ourselves to inserting the words *Interchange of* before the words Rolling-stock. I do not anticipate any difficulty with regard to this wording.

M. KALFF (Netherlands; speaking in French). — I beg to observe that the second part of Article 3, as now worded, gives the impression that it is not desirable to take measures entailing alteration in essential characteristics. I do not think that is what was intended. Such measures are most desirable, but they are exceedingly difficult to apply. The present difficulty arises from the fact that Spain, and several other countries, see in the first part of the article an obligation which, in my opinion, it does not contain. Article 3 no more involves an obligation for Spain to narrow her railway gauge than it does for France to widen hers. If Spain signs the Convention and does not alter her gauge, she cannot be blamed by anyone for so doing. I should prefer, then, to keep the text of Article 3 as it stands in the *Green Book,* and leave what has been put in the second part of the article for the Final Protocol.

The CHAIRMAN. — Does the Netherlands Delegate feel very strongly on this point? The principle here expressed has been approved by the Committee, and this article is to be the point of departure for various special Conventions.

M. KALFF (Netherlands; speaking in French). — I do not press the point.

M. EDWARDS (Chile; speaking in French). — The Chilian Delegation accepts the text adopted by the Sub-Committee for Article 3 of the Draft Convention under discussion; I will, however, take this opportunity of giving you a rapid review of the railway situation in Chile, which will assist you to understand why in South America it is not yet possible—and perhaps never will be possible—to arrive at a unified railway system, and consequently at interchange of rolling-stock.

Chile, which is a narrow strip of country 4,300 kilometres in length and with an average width of only 170 kilometres, has the greatest length of railway line in proportion to its area of any country in South America. Chile has one kilometre of line to every 90 square kilometres, the average corresponding figure for South America as a whole being only one per 200. Chile was the first country to build a railway in the Southern Hemisphere, at a period, if I may say so, when railways were still in their infancy. It will thus be readily understood why we have a fine collection of samples of every kind of track. The Southern system of the country has 60 centimetre, one metre and 1·680 metre tracks. On the Northern system the variety is still greater, with tracks of 76·2 centimetres, one metre, 1·067 metres, 1·270 metres and 1·435 metres. On the Southern system the gauge which predominates is 1·680 metres, and on the Northern system one metre. This is explained by the fact that the Southern system is built in a valley, the Northern in extremely hilly country. This is also the reason why a maximum gauge of one metre has had to be adopted for all international railways connecting Chile with her neighbours. The Antofagasta-Oruro-La Paz Railway, the oldest railway in South America, has a gauge of 0·762 metres; it crosses the Cordillera de Los Andes at a great height above sea-level. The Arica-La Paz Railway, which was built throughout its length of 460 kilometres at the expense of the Chilian Government, crosses the Andes at a height of 4,280 metres above sea-level; it includes a 32 kilometre section of rack railway. The railway from Los Andes to Mendoza in the Argentine crosses the Andes at an altitude of 3,189 metres. You will understand that we are prohibited by these difficulties of a topographical nature from employing a gauge wider than one metre; to do so would involve prohibitive expense.

I should like to thank the Committee for the kindness which it has manifested in affording me this hearing.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Mr. Chairman, could the amendment be read once again?

M. LOISEAU (France; speaking in French). — This is the amendment :

It is clearly understood that the above-mentioned measures do not include those which involve alterations in the essential characteristics of a railway system or rolling-stock.

The CHAIRMAN. — I will put to the vote Article 3 as amended by the Sub-Committee, and I should like to thank both the Sub-Committee and M. Loiseau for the work which they have so kindly undertaken.

The article was adopted, 23 voting for.

NEW ARTICLE PROPOSED BY THE ITALIAN DELEGATION

The CHAIRMAN. — The Italian Delegate will address the meeting on the subject of a new article which he is proposing. The text reads as follows :

The High Contracting Parties undertake, in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international

traffic, to adopt as far as possible all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

M. SINIGALIA (Italy; speaking in French). — It was decided by the Italian Delegation to lay before you the text of a new article, upon which many words need not, I think, be wasted. As you are aware, the question of electric traction is becoming of great and increasing importance; I need not dwell upon the advantages of this method of traction,—they are well known. We consider that, particularly on mountain lines, it would be most desirable—of course, within the limits of possibility—to transform the method of traction from steam to electricity.

The necessary amount of power must, of course, be available, and one country may possess a large store of such power, whilst a neighbouring country may possess a much smaller measure. We are therefore of opinion that it would be a great advantage, with a view to the improvement of lines of communication, if the countries possessing such power, after having satisfied all their own requirements, consented to cede their surplus electrical power to other countries lacking such resources. In this way these latter countries would be enabled to obtain power to electrify their frontier lines.

This does not, of course, imply any absolute engagement; it is only a recommendation put into words by the Italian Delegation, and I imagine that no objections will be raised against it in this gathering.

M. VELASQUEZ (Paraguay; speaking in French). — On the subject of the addition proposed by the Italian Delegation, I would venture to observe that the word *undertake* has once more been used. I consider that there is even more reason on this occasion than there was on the preceding one to substitute the words *consider desirable*, as was done before. With this reservation, I agree to the proposal made by the Italian Delegation.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation accepts the suggestion of the Delegate of Paraguay.

M. HANREZ (Belgium; speaking in French). — I consider that this motion is inopportune here; the question of the electrification of international lines goes beyond our competence. Even if the Conference were prepared to adopt the Italian Delegate's proposal, it is highly probable that the military authorities in the various countries would oppose it on strategical grounds; the view expressed by us here might be contrary to that which they held. I consider it preferable, therefore, not to adopt this motion.

M. KALFF (Netherlands; speaking in French). — To my mind the Italian amendment is outside the scope of the Convention now under discussion; we could not possibly accept it. We shall begin by conceding electricity and end by conceding coal!

M. CARLIN (Switzerland; speaking in French). — I support the view expressed by the Belgian Delegate. Even in the weakened form proposed by the Delegate of Paraguay,—*consider desirable* instead of *undertake*—the Italian amendment could not be accepted by the Swiss Delegation. As has been pointed out by the Netherlands Delegate, the question is an altogether special one and is outside the scope of our Convention. It appears to me that the circumstances are of such an exceptional nature that each case should only be dealt with by means of special agreements between the two or three countries which may be concerned. I do not appreciate any the less the aspect of the Italian amendment which brings into prominence that feeling of unity by which the various peoples of the world should be bound together,—that unity which we are summoned here to promote, but, in the circumstances, I think it better not to include this article in the Convention.

The CHAIRMAN. — Does the Italian Delegate accept the alteration proposed by the Delegates of Brazil and Paraguay?

M. SINIGALIA (Italy; speaking in French). — I do, in view of the tone of the discussion which has taken place; although I am sorry that this alteration has been made in the amendment, I will not oppose it in any way. I should like to add further that the Italian proposal does not contain anything liable to interfere with the use of electrical power by the countries which possess it; it would be a friendly concession made subject to conditions to be laid down by the two countries concerned, and only where there is a surplus of electrical power, and when all the requirements of the owning country have been satisfied.

I will add a remark to the observation made which was prompted by misgivings on military grounds. Fears such as this apply not to the question of electrical power alone, but to any form of operation on railway systems, whether steam traction or electric traction. I therefore fail to understand the objection. Besides, the Convention contains all desirable safe-guards for national security. The Italian Delegation intends to propose the inclusion in this Convention of an article similar to that appearing in the other conventions, and which actually deals with the right of countries to take the measures which they believe to be essential to their national security. The point raised by the Belgian Delegate arises not only in connection with the transformation of methods of traction, but also in connection with every other question concerning means of communication. It is not the method of traction which imperils the safety of a country, but the facilities for communication themselves.

I agree to the substitution for the word *undertake* of the words *recognise as highly desirable.*

The CHAIRMAN. — I will put the new article to the vote with the alteration put forward by the Delegation of Paraguay, namely, the substitution for the word *undertake* of the words *recognise as highly desirable.* The alteration brings this new article into accord with the earlier articles which have already been voted.

M. VELASQUEZ (Paraguay; speaking in French). — I should like this vote to be regarded merely as a provisional vote and not as a final one.

The CHAIRMAN. — No decision of the Committee is final; every text adopted here has to be submitted to the plenary Conference.

M. VELASQUEZ (Paraguay; speaking in French). — I will explain my meaning. I thought that the first vote would relate to the original text containing the modification proposed by the Delegation of Paraguay, and that after this vote a final one would be taken on the text as it would then have been decided by the Committee.

The CHAIRMAN. — As the Italian Delegation has accepted your modification, nothing remains to be submitted to the Committee except the text thus modified.

M. HANREZ (Belgium; speaking in French). — May I remind the Chairman that I proposed to omit this new article altogether? Is it not on this proposal that the Committee should be asked to vote first of all?

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Before the vote is taken, I would ask leave of the Committee to submit a slight addition to the text, which may perhaps obtain the support of some of our colleagues. The following is the text which I propose :

The High Contracting Parties *consider desirable,* in connection with the construction or electrification of railways in the neighbourhood of a frontier which are of interest to international traffic, to adopt as far as possible, *and without prejudice to the interests of industry and of internal traffic in the country in which the electrical power is produced,* all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

M. SINIGALIA (Italy; speaking in French). — I am most grateful to the Brazilian Delegate for proposing this addition to my text, and am most happy to accept it. As I have already said, it is in complete accord with the spirit of the Italian proposal.

I see no objection whatever to this article being referred to a sub-committee with a view to improving the wording and giving satisfaction to the various views which have been expressed. I must say, however, that I consider it needless to adopt such a procedure; the text as completed by M. Barboza Carneiro seems to me clear enough.

M. REINHARDT (Austria; speaking in French). — The amendment of the Italian Delegation on the subject of the electrification of railways concerns a question of considerable importance. Although the problem has not yet assumed very large proportions, it has to be recognised that its importance is increasing daily, by reason of the necessity under which many countries find themselves of substituting electric for steam traction.

Will the Committee allow me to give an example which will illustrate the wide bearing of the question? Before the war, the railways of the Austrian Empire extended for a length of about 20,000 kilometres, and the cost of the fuel necessary for traction over the system amounted to about 55 million kronen. To-day the length of the railways is no more than 4,500 kilometres—that is to say, a quarter of their former length, and traction—upon which, moreover expenditure, is limited on account of the lack of coal and stock, and of other difficulties to which I referred in the Report which I had the honour to present to the Conference—traction, I repeat, involves an expenditure of 2,000 million kronen for fuel. Thus, on a railway system reduced to a quarter of its original extent, and in return for a very limited volume of traffic, Austria is spending forty times as much.

The reason for the change is a very simple one. Formerly, Austria possessed coal-mines on which she drew to provide traction on her railways to the extent of 84 % of the total needs. Whatever additional coal was necessary was imported from Upper Silesia or from England. To-day the mines which we possess are of minor importance, and are only capable of providing 12 % of our total requirements in coal. We are obliged to rely on foreign sources for 88 %. As we have to pay for coal in foreign currency, the loss sustained by us on the exchange, due to the depreciation of our own currency, may be estimated at 1,850 million kronen out of 2,000 million spent by us on fuel.

This is a typical example, and the Committee will understand why the electrification of railways represents a question of vital interest for Austria; it is natural that the latter should wish to transform the method of traction on her railways by making a gradually increasing use of those of her waterways which are capable of supplying sufficient hydro-electrical power. The utilisation of hydraulic power represents a problem so complex and of such wide bearing that it would be dangerous to endeavour to cope with it in a Convention on the International Regime of Railways.

I should like also to state my conviction that there will be no sort of difficulty, should the occasion arise, of carrying out the suggestion of the Italian Delegation at some point on the Austro-Italian frontier; but it appears to me out of the question to include in the Convention on the International Regime of Railways—whether in connection with Article 3 or some other article—a clause dealing with the important question of the utilisation of hydraulic power.

M. CARLIN (Switzerland; speaking in French). — I recognise the conciliatory spirit which led our Brazilian colleague to suggest an amendment to the Italian proposal. I am myself animated by the same desire for conciliation, but I regret that I cannot accept the text proposed by the Brazilian Delegation; it does nothing to remove the substantial objections which, since the outset of the discussion, have been levelled against the new article. I realise the significance of the article from the standpoint of international unity, but, even viewed from that aspect, it is too narrow; it should be extended to coal, as we have to consider not only electric traction but steam traction. If the matter is looked at from this standpoint, why not admit that countries possessing coal should undertake to cede some of it to countries which have none?

I merely wish to draw the Committee's attention to the importance possessed by this article. Questions are involved which far exceed the scope of this Convention, and it would therefore be better, in order to obviate any misunderstanding, to reject the article altogether. I put this as a formal motion.

The CHAIRMAN. — I think that the proper course is to vote on the question whether the new article, with the amendment proposed by the Brazilian Delegation and accepted by the Italian Delegation, should be included in the Convention or not. I will read the text once more :

The High Contracting Parties consider desirable in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international traffic, to adopt as far as possible, and without prejudice to the interests of industry and of internal traffic in the country in which the electrical power is produced, all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

The new article was rejected by 16 votes to 6.

DISCUSSION OF ARTICLE 4

The CHAIRMAN. — We will pass to Article 4, which reads as follows :—

Special Conventions.

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation however, must not be construed as either preventing the establishment of local tariffs on a different basis from import and export tariffs, or as affecting in any way the question of combined rail and sea tariffs.

The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

If the Committee agrees, we could take the Italian amendment first. The British amendment (1) is first in order, but as this amendment and the Czecho-

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(1) The text of the British amendments to Articles 4 and 5 is as follows :—

ARTICLE 4

"Omit this article and substitute the following :—

Special Agreements.

"In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3."

ARTICLE 5

"Omit this article and substitute the following :—

Railway Tariffs and Facilities.

"In the case of nationals of the Participating States or traffic to or from their territories, the railway tariffs fixed, or the facilities granted, shall not depend in any way on the nationality of

Slovak amendment (1) are of the same nature, it would be desirable to discuss them together.

Is there any objection?

I declare the discussion open on the amendment proposed by the Italian Delegation.

M. SINIGALIA (Italy; speaking in French). — The Italian Delegation has no alteration of substance to propose to Article 4. We only desire to render more precise the text of the end of the first paragraph, which deals with the possible establishment of local tariffs differing from import and export tariffs. From the various discussions which have taken place on the subject, and from the Commentary (2), the fact has been elicited that every country should have the right to establish different tariffs for its internal traffic,—tariffs differing not only from import and export tariffs, but also from transit tariffs. Every tariff system involves several classes of tariffs,—internal, import, export and transit. We consider the article incomplete without some additional precision with regard to transit tariffs. We therefore ask that for the words *local tariffs on a different basis...* there should be substituted the words *tariffs on a different basis for internal, import, export or transit traffic...*

M. HANREZ (Belgium; speaking in French). — Like the Italian Delegation, I should like to add a few words to this article. I ask that at the beginning, after the words *In the absence of relevant existing conventions, special conventions shall provide for...* the following words should be added : *as far as possible.*

Secondly, at the end of the first paragraph, after the words *This stipulation, however, must not be considered as either preventing...* I propose the addition of the words *the existence and establishment...*

M. LANKAS (Czecho-Slovakia; speaking in French). — The British and Czecho-Slovak amendments go much further than the Italian amendment,—which, by the way, I support. The British and Czecho-Slovak Delegations propose to make a special article with regard to tariffs, and to transfer the passage relating to special conventions to another article. Surely we ought to discuss first in order the Italian amendment which, incidentally, is in accord with the Czecho-Slovak and British amendments. The Belgian Delegate is referring to Article 4 in its original form, whereas the Czecho-Slovak and British amendments provide for a special article on the question of tariffs.

With regard to the Italian proposal, I accept it.

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passengers or considerations of nationality in the ownership, origin, starting-point or destination of the goods or traffic, or on the flag or ownership of the vessels which have been, or are to be employed, either before or after their transport by rail. This stipulation does not affect the establishment of local railway tariffs on a different basis from railway tariffs on imports or exports, or of combined rail and sea tariffs.

"Transport charges shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more consignors is expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally available to all under the same terms and conditions."

(1) The following is the text of the Czecho-Slovak amendment to Article 4.

ARTICLE 4

"Omit this article and substitute the following :—

Transport Tariffs and Facilities.

"The concession of transport facilities or the establishment of tariffs, as also their adoption and application as regards passengers subjects of any one of the Contracting States, or goods coming from or proceeding to any one of the Contracting States, over the same throughout route, in the same direction, and in the same conditions must not depend upon the nationality of passengers upon the ownership or commercial origin of goods or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport tariffs shall be calculated in accordance with the tariffs legally in force and duly published; and any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the establishment of different import, export or local tariffs, nor does it affect the question of combined rail and sea tariffs.

(2) See p. 210.

M. LOISEAU (France; speaking in French). — I am very ready to support the amendment put in by the Italian Delegation. I will only propose a slight alteration to the form of the text, in regard to which, by the way, I am in agreement with my colleague. Instead of saying *tarifs différents selon les trafics intérieurs d'importation... (tariffs on a different basis for internal, import... traffic...)*, the French of which is a little doubtful, could we not say—the idea is the same—*tarifs différents selon qu'il s'agit du trafic intérieur, d'importation, d'exportation ou de transit (different tariffs for internal, import, export or transit traffic)*.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As the British proposal is the one furthest from the text of the Draft, I ask that it should be discussed first; we will then consider the proposals which differ less. I believe that in this way we shall progress more quickly. With regard to the substance of the question, I am fully in agreement with the Italian proposal as amended by the French Delegation. We can then examine the Czecho-Slovak proposal.

The CHAIRMAN. — I suggested that the Italian proposal should be taken first because, after going through it, I was convinced that, as it is only in the direction of defining the tariffs in question more explicitly, there would be no objection on the part of the Committee. I gather that there is no objection to the principle of the Italian amendment, and, having regard to what has been said by various delegates, the wording can safely be left to the Drafting Committee. If that is so, we may now proceed with the amendments of the British and Czecho-Slovak Delegations.

Mr. COLVIN (Great Britain). — In view of the fact that the British amendments to Articles 4 and 5 are mutually interdependent, it will, I think, be more convenient if I deal with them at one and the same time.

I may say at once that we have not sought in these two amendments to import any new principle into the Convention; all that we have attempted to do is to define with greater precision the principles laid down in the existing text. If you will refer to Articles 4 and 5 as they appear in the *Green Book*, you will see that it is proposed to establish special conventions which are to include, not only the principles advocated in Articles 1, 2 and 3, which principles are limited in their application because there are certain States by which, for geographical reasons, they cannot all be brought into force,—but also the principles contained in Article 4, which is of general application for all States.

Under these circumstances it appears to the British Delegation that it would be better to deal with the measures necessary to carry out the principles contained in Articles 1, 2 and 3 by a series of special Conventions between the regional groups of States to which these principles are applicable, and to leave in the main Railway Convention the general principle contained in Article 4. To re-affirm this particular principle in each special Convention would in no way add to its strength and therefore, in our opinion, would only be a useless repetition. But it is of course understood that there shall be nothing in the special Conventions which can in any way conflict with the general principle laid down in the main Convention.

Turning now to the new Article 4 as proposed by the British Delegation, I do not think this requires any detailed explanation. It will be observed that, in connection with the proposed special Conventions, we have omitted any reference to the question of combined transport by rail and water, including sea journeys, because, in our opinion, it is doubtful whether such questions are properly within the scope of a Railway Convention, particularly in view of the fact that combined rail and sea tariffs are specifically excluded from this Convention.

As regards the new Article 5 proposed by the British Delegation, although we have made some changes in the wording as given in the *Green Book*, our object in so doing has not been to alter the principles there given, but only to define them with what we believe to be greater clearness. According to the wording we are suggesting, I may point out that there is nothing to forbid variations of rates in accordance with variations in traffic conditions or regularity of service, or on account of considerations of commercial competition between different routes. Railways will be left as free to

follow out the ordinary principles of commercial rate-making in the case of international traffic, as they will be in the case of local traffic; all that they are asked is not to vary international traffic rates for purely political purposes.

The CHAIRMAN. — I consider it essential that the Committee should decide whether it desires Articles 4 and 5 to be remodelled in this way, and, if so, whether a shorter article entitled *Special Conventions* should be placed first in order, as in the British amendment, or second, as in the Czecho-Slovak amendment. This constitutes an essential difference, for according to the Czecho-Slovak amendment, one article more is brought within the purview of the article entitled *Special Conventions*. It is mainly a question of the general framing of the article; we can discuss the wording afterwards.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the Chairman has pointed out, there is a difference between our proposals and the proposal of the British Delegation. We should like to begin with the article which the British proposal calls Article 5, and then let the provision which deals with special Conventions follow as a separate article. It appears to me more logical to speak of special Conventions in a separate article, which would refer to Articles 1, 2 and 3 and to the new Article 4.

With regard to the wording, I would observe that we have simply kept to the original *Green Book* text, which would appear to be adequate, and have only modified it in the direction suggested by the Italian Delegation, namely, in such a way as to make it clear that the various States will have full liberty to establish import and export tariffs on a different basis one from the other.

I accept, then, the Italian amendment as improved by the French Delegation. I would also venture to ask the Committee to examine whether the *Green Book* text of Article 4 could not be retained; it is not very different from the rest of the British text, and I think that the more reasonable course would be to keep it.

M. CARACOSTEA (Roumania; speaking in French). — The Czecho-Slovak amendment is most suitable here. It meets the desires expressed in the Italian amendment and in the other amendments; I therefore support it heartily, and would appeal to the Committee to adopt it as it stands. What purpose will be served by discussing another text? I would beg the Chairman to agree to put it to the vote.

Mr. COLVIN (Great Britain). — Should the *Green Book* text be retained, I would ask the Committee to consider what might happen in the following circumstances. Suppose a State, which I will call A, carries on international traffic with two States B and C, situated on its boundaries. Traffic with each of these States passes over different routes, but both these routes are of much the same length, and in respect of operating conditions are very similar. What is there to prevent State A from quoting much more favourable rates on the route used by State B than on that used by State C? Great Britain has no particular concern in such a question; I raise it in the interests of justice, particularly towards some of the smaller States.

M. LOISEAU (France; speaking in French). — However favourable my opinion of the Czecho-Slovak amendment may be, I do not go so far as to assert, as does the Roumanian Delegate, that it should be adopted without discussion. I prefer, for the moment, to support the British amendment, which, in my opinion, has the very great advantage of singling out from Article 4 of the *Green Book*, which deals with somewhat dissimilar subjects, a clear and distinct idea, embodied in a succinct phrase, which I will read : *In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3.*

I consider it quite natural to separate this clause, and thus meet the wishes of the British Delegation with regard to the point.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would inform M. Loiseau that we are doing the same thing,—we also have singled out the idea, and to even a greater

degree. There is a misunderstanding; the Czecho-Slovak amendment isolates the provision still more, seeing that it places it in an altogether independent article.

M. LOISEAU (France; speaking in French). — On this point I concur in the observations of the Czecho-Slovak Delegate, but some text must be taken as a basis for discussion. Shall we take the *Green Book*, the British amendment or the Czecho-Slovak amendment? We cannot enter upon the discussion until we are clear on this point.

M. LANKAS (Czecho-Slovakia; speaking in French). — The misunderstanding arose from my saying that we were taking the *Green Book* text; but we *are* taking it, whilst at the same time making a separate article out of this provision.

Mr. COLVIN (Great Britain). — We really do not much care in what order the articles are put. If the Committee would prefer to change over the order, the British Delegation will have on objection.

M. LANKAS (Czecho-Slovakia; speaking in French). — It must not be forgotten that if two distinct articles are made out of Article 4, the present Article 5 of the Draft will, of course, have to be omitted as no longer necessary.

M. SINIGALIA (Italy; speaking in French). — I agree with the proposal to divide Article 4 into two parts, and if the British Delegation does not press its proposal, I think the new article formed of the first sentence of Article 4 of the Draft might well be put second. I therefore readily support the Czecho-Slovak proposal; I consider it necessary for the special Conventions referred to here to include not only the proposals or undertakings covered by the preceding articles, but also those coming under Article 4.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — May I draw the attention of the Committee to the signal difference which exists and which has been emphasised by the Italian Delegate. If his proposal were accepted, the new Article 5 would refer not only to Articles 1, 2 and 3, but also to Article 4.

Whilst accepting the principle of division as proposed by the British and Czecho-Slovak Delegations, we should nevertheless prefer the order proposed by the latter; this would bring all Conventions under the terms of the new Article 5. It is for this reason that I would ask the Committee to express itself in favour of the Czecho-Slovak proposal.

M. EDWARDS (Chile). — The Chilian Delegation accepts in principle Articles 4 and 5 as proposed by the British Delegation, but we should require the wording to be clearer. We suggest that Article 5 of the British amendment should serve for Article 4, and that Article 4 of the British amendment should serve for Article 5, worded as follows :

In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2, 3 and 4.

These conventions shall include as far as possible provisions applicable to combined transport by rail and water.

The CHAIRMAN. — The opinion of the Committee appears to be that the order advocated in the Czecho-Slovak amendment is the best. Article 4 of the Czecho-Slovak amendment is Article 5 of the British amendment.

Does anyone wish to speak on Article 4 of the Czecho-Slovak amendment and Article 5 of the British amendment?

M. POLITIS (Greece; speaking in French). — The Greek Delegation accepts the British proposal. It proposes to substitute for the words *over the same throughout route, in the same direction* in the first paragraph of Article 4 (*Green Book* text) the words *...over equivalent routes and in the same operating conditions...*

M. LANKAS (Czecho-Slovakia; speaking in French). — I consider that the question is now sufficiently clear and that a vote could be taken.

M. SINIGALIA (Italy; speaking in French). — We agree to the division as proposed by the Czecho-Slovak Delegation.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — I am fully prepared to accept Article 5 as proposed by the British Delegate, but I would ask his leave to make a slight addition to it. After the words *either before or after their transport by rail* I suggest that the following sentence should be inserted :

This provision may be inapplicable when the owners or charterers of the vessels employed before or after the transport by rail establish differential freight scales.

The text would continue as follows : *It is also formally understood that this stipulation will not affect either the establishment of different local tariffs for import, export or transit traffic, nor the question of combined rail and sea tariffs...*

The text of this article plainly conveys the idea of the supplementing of one means of transport by another. The railway carries on by land the function of the vessel. It is laid down in the article that the tariffs for this part of the journey should in no wise depend either *on the nationality of passengers or considerations of nationality in the ownership, commercial origin, starting-point or destination of the goods or traffic or on the flag or ownership of the vessels which have been or are to be employed before or after their transport by rail.*

What we require is reciprocal treatment. A definite obligation is laid down in the article. It might be said that an obligation of this nature would be more suitable in a Convention on maritime traffic. Unfortunately, there is no question for the moment of making a Convention of this kind. I do not know that one will be made. It would appear to me, then, that we should protect the interests of those parties who are now entering into an undertaking and who possess railways but not vessels.

M. AHLBERG (Sweden; speaking in French). — There is an important difference between the British and Czecho-Slovak texts. In the first of these, the words from the *Green Book : over the same throughout route, in the same direction and in the same conditions* do not appear as they do in the Czecho-Slovak amendment. I presented an amendment to the British amendment, in order to reinstate these words (1). As the Czecho-Slovak amendment has been submitted, it appears to me that the Committee might adopt it, since it supplies the better wording here.

M. LANKAS (Czecho-Slovakia; speaking in French). — I am happy to observe that the British Delegation accepts our formula,—at least, that is what I gather. This being so, and as the question would now appear to be sufficiently clear, the Committee might proceed to vote.

M. COLVIN (Great Britain). — I am sorry to have to disillusion M. Lankas. I do not accept his amendment in its entirety, but only the change in the order of the articles. I drew the attention of the Committee particularly to one question, and I wonder whether, in view of the importance of that question, it would not be preferable to refer the article to a sub-committee.

There is a possibility of the Swedish amendment re-acting in a rather dangerous manner. According to the British amendment, any tariff variations based on considerations of nationality are prohibited on all routes used by international traffic. According to the Swedish amendment such variation is prohibited only if three

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(1) The Swedish amendment reads as follows :

Amendment to the British amendment.

The wording proposed by the British Delegation no doubt expresses more clearly than the *Green Book* the principles to be followed with regard to the establishment of tariffs; nevertheless, it omits some very important words which in our opinion it is essential to retain. We therefore propose to amplify the British amendment as follows :

After the words *or facilities granted* insert the words *over the same throughout route, in the same direction and in the same conditions, shall not depend...*

conditions are fulfilled; the same throughout route is stipulated, the transport must take place in the same direction and the traffic conditions must be exactly similar. Thus, if one of these conditions were not fulfilled,—if traffic conditions, for instance, were not the same, tariffs could offer variations based exclusively on considerations of nationality.

Turning now to the text of the British amendment, we see that tariffs for international traffic over all routes, in any direction and in any conditions are not to depend in any way on considerations of nationality, although variation is admitted if it is based on any other grounds. It would therefore appear unnecessary to add the words proposed by the Swedish Delegation, the text of the British amendment covering not only the special conditions now under consideration, but also any other conditions.

The question which forms the subject of the amendment proposed by the Brazilian Delegation is at present under examination by a Sub-Committee which has yet to present its report, but if the Committee so desires, it can obtain information immediately from the Chairman of this Sub-Committee, who is present at the meeting now.

The CHAIRMAN. — The Committee will doubtless desire to hear the Chairman of the Sub-Committee which was set up by the Plenary Transit Committee, with a view to the study of the proposal made before that Committee by the Brazilian representative (1), and which is similar to the proposal which has just been made at this meeting.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I am not a member of this Committee, but if the Committee would care to hear me, I could explain that the Brazilian Delegation has raised, not only in connection with the Railways Convention, but also in connection with the Transit (2) and Waterways Convention, the general question of whether a Contracting State is bound to give the advantages of these Conventions to a State which differentiates inequitably against its commerce. It was recognised at the time of the discussion of the Transit Convention that this raised a very serious question of principle, and the matter was referred to a Sub-Committee, of which I was made Chairman. This Sub-Committee met yesterday and heard at length the explanations of the Brazilian Delegation. We came to the conclusion that it would not be possible to deal with so big a question in the Convention we are discussing at Barcelona, because the whole question of the equitable treatment of commerce is a matter for another technical organisation of the League,—namely, the Economic and Financial Organisation.

It was decided that the matter should be referred to in the General Report on the Transit Convention, and that a request should be made to the Conference to recommend the Council of the League to direct the Economic Section, in consultation with the Advisory and Technical Committee on Communications and Transit, to study the whole question of whether it is possible and desirable that Contracting States should be authorised to deny the benefits of one Convention in order to enforce observance of the terms of another. Of course, it will be entirely for the Conference to decide whether it adopts such a recommendation. I only take the opportunity of mentioning this here in order that you may see,—as I know my friend, M. Barboza Carneiro will realise,—that what he has now moved comes well within the scope of the investigations of the Sub-Committee. Possibly he will not be inclined after this explanation,—with which, I may say, the Brazilian Delegation is entirely in accord,—to press this particular amendment.

I would thank the Chairman for giving me the opportunity to make this explanation, although I am not a member of this Committee.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I should like in the first place to thank Sir Hubert Llewellyn Smith for the lucid manner in which he has explained this matter before the Committee; we are fortunate in that he has put us in

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(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 53, 183 and 191.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 58.

possession of the facts as regards what passed in the Sub-Committee which was appointed to deal with the Brazilian amendment to Article 2 of the Transit Convention. I may observe, however, that the task of our Committee consists in preparing a framework to serve as a model for special conventions which will probably be concluded between various groups of countries. In this skeleton Convention we said expressly that there must not be included in these special Conventions any clause which would detract from facilities accorded for transport; whilst it is further stated that transport tariffs must not in any way depend *on the nationality of passengers or considerations of nationality in the ownership, commercial origin, starting-point or destination of the goods or traffic, or on the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail.* It is stated, then, in a most precise manner, that nothing shall be laid down in these special Conventions which would be contrary to this principle.

It may happen that certain States are disposed to grant these facilities, but they will find it impossible to do so in view of the restrictive measures proposed by us. They may say : We wish to grant every kind of facility on our railways; we will not practise any tariff differentiation. But we possess no vessels, and we are the victims of differential measures which do enormous damage to our commercial relations.

It seemed to me that the text which I proposed was a flexible one, and would therefore prove acceptable. It allowed States the possibility of introducing a restriction if they considered it necessary; for my part, I do not think we ought to impose on these States the obligation of introducing such a restriction. It was for this reason that I said : *This provision may be inapplicable when the owners or charterers or the vessels employed before or after the transport by rail establish differential freight scales.* The expression *may be inapplicable* appears to me to be sufficiently elastic and to leave a sufficient margin to allow of every contingency. I do not press the point; but I would ask the Chairman whether he will not consult the Committee as to the advisability of referring this amendment, not to the Sub-Committee which is examining the Brazilian amendment to the Transit Convention,—which has a much more general scope, —but to a sub-committee which would examine the amendments to Article 4 as a whole, and would consider the possibility of modifying this article in the sense which I have indicated.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Both this discussion and the explanations which have been given us by Sir Hubert Llewellyn Smith have been most useful. I was much struck by the arguments of the Brazilian Delegate. Would it be fair to impose in respect of railway transport certain strict obligations from which other methods of transport are exempt? There are States which in order to penetrate into certain ports would go as far as to carry out transport free. We have here a most important question of some gravity.

There is another point which I should like to emphasise. Both here and at the Commission of Enquiry at Paris it has often been maintained that railways ought never to serve as weapons of economic warfare. I fail to understand this,—I said as much in the general discussion. If it be permissible to pursue an economic policy by the aid of navigation, why should it not be so where railways are concerned? Countries which sacrifice everything for their railways are justified in requiring that the fact should be taken into consideration. Some stormy debates took place at the Commission of Enquiry at Paris, and it was as a compromise that the *Green Book* text was unanimously adopted. Nevertheless, may I be allowed to remind the Committee of what is said in the *Green Book* (1) :

> In the course of discussion prominence was given to the connection between general railway practice on the one hand, and the economic and railway policy of different States on the other, without, however, affecting the points agreed to for inclusion in the body of the Convention.
>
> The summary of these discussions may be of interest to the Conference, particularly inasmuch as they reveal certain points of view corresponding...

(1) See p. 210.

It is stated further (1) :

The Commission recognised that the question was not one which for the present could be useful in a General Convention put forward for immediate adoption.

I lay stress on the words *put forward for immediate adoption*.

It was persuaded that the different opinions expressed would tend gradually in the future to coincide, and that the international organisation set up for dealing with communications would little by little, as it came into force, tend to lessen differences now existing between the various States as regards both their theories and their actual policies. In this belief, the Commission decided merely to take official note of the various attitudes and to transmit them quite impartially to the permanent Organisation of the League of Nations.

You will observe that there is nothing new here. I have a great respect for any new questions which are raised at this Barcelona Conference; but, nevertheless, this discussion has proved that the principles contained in the *Green Book* text, those of the Czecho-Slovak and those of the British amendment are in reality identical. Further, if I understand the British Delegate aright, he said : "For my part I accept what has been said in the *Green Book*, but I am taking up the cudgels for the small countries. The small countries must say what they want". It seems to me that most of the small countries are asking that we should keep to what was said in the *Green Book*. The British proposal gives the impression of being incomplete,—the Greek Delegation would like to see it amended. Again, there is talk of a Swedish amendment; but I think I may say that the Swedish amendment to the British proposal does not exist,—that which is required by the Swedish Delegation is already contained in the *Green Book*. It is for this reason that, after following these explanations, I should like an agreement to be reached and a vote to be taken,—if the Chairman consents. May I observe that not a single article has been unanimously adopted?

M. AHLBERG (Sweden; speaking in French). — The British Delegation may probably be right in regard to the small objections which it has raised, but it is simply a question of drafting, and presents little difficulty. With regard to the Czecho-Slovak amendment, I consider that there is no object in discussing it further; I declare that I support it, and I would request that a vote be taken upon it.

Mr. G. L. COLVIN (Great Britain). — Before a vote is taken on the Czecho-Slovak proposal, there is a question of principle which I should like to see settled by the Committee. Do we agree that, as between different routes, tariffs for international traffic may be varied on account of considerations of nationality? That really constitutes the whole difference between the British and Czecho-Slovak amendments, and I should like the point to be settled.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation cannot see its way to go further than Article 4 of the *Green Book*, but we consider that from the point of view of wording, the Czecho-Slovak proposal is much superior. I therefore support that proposal as amended by the Italian Delegation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation is ready to accept the Czecho-Slovak amendment, but, in our opinion, there is room both in it and in the British amendment for the text which we have proposed. I lay stress upon this point, because most important interests are at stake here, and I should like it at least to be placed on record that every effort was made by us to defend these interests.

The CHAIRMAN. — I gather that it is the wish of the Committee that we should pass to a vote on the Czecho-Slovak amendment, but before doing so, there is a question on which I should like the Committee to hear M. Etienne.

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(1) See p. 211.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — Article 4, both in the *Green Book* and in the Czecho-Slovak amendment, confirms the principle of equality of treatment for all in the same conditions, as applied by the Bern Convention, and as laid down in the Draft International Convention on the Conveyance of Passengers. The only remark I would make here is, that in the second paragraph of Article 4 of the *Green Book*, which re-appears as the last sentence of the Czecho-Slovak amendment, goods only are dealt with. This can be explained by the fact that the paragraph reproduces almost word for word Article 11, paragraph 1, of the Bern Convention, in which you will see that passengers have been passed over almost entirely. In Article 7 of the Draft Convention prepared at Bern—*Passengers and Luggage*—we find very similar provisions :

Transport rates shall be calculated in accordance with tariffs legally in force...

and a little further on :

Published tariffs only shall be valid; the conditions stipulated therein must be applied to all uniformly...

and again :

Any special treatment having as its object the granting of rebates to one or more passengers is expressly forbidden and considered null and void. Rebates may, however, be granted, provided they are duly published and equally applicable to all in the same terms and conditions.

I asked to speak in order to suggest the introduction before the word *consignors* of the words : *passengers or to one or more consignors*. In this way the paragraph would cover both passengers and goods.

The wording of the French text of the concluding sentence strikes me as being somewhat clumsy,—*étant autorisés toutefois*. We might say : *toutefois sont autorisés*. This sentence does occur in the Czecho-Slovak amendment, but it should be modified in the manner which I have indicated.

M. SINIGALIA (Italy; speaking in French). — In order to avoid lengthy discussion, the Italian Delegation had essayed to suggest as few changes as possible in the text of this article. I must, however, draw attention to something which is omitted both from the *Green Book* text and from that of Article 4 as proposed by the British and Czecho-Slovak Delegations. The British Delegation does not consider that there is such an omission; indeed, I have heard it stated by the Delegate of Great Britain that considerations of commercial competition would not be excluded by the terms of his text. Nevertheless, I do consider it necessary, in order that the article may read quite clearly, to insert a clause in conformity with Article 4 of the Convention on Freedom of Transit, stating that the possibility of tariff differentiation in accordance with considerations of commercial competition is in no way excluded. It might be thought that this is not stipulated in the article, because it was desired explicitly to exclude it; but that was surely not the idea of the article. I am simply suggesting a drafting improvement, in order to avoid any ambiguity on the point.

Another point. The *Green Book*, as well as the Czecho-Slovak proposal, speaks of tariffs applicable over the same throughout route, in the same direction, and in the same conditions; whereas the British Delegation, for motives the importance of which I realise, has omitted all mention of this in its proposal. I was under the impression that during the discussion which took place at Paris at the time when Article 4 of the Draft was being prepared, only rail routes were held in view. In the course of this morning's discussion of the words *throughout route*, I gathered that what the Committee had in mind was a combined journey by sea and rail. I should like an explanation on this point. Are these words intended to convey the idea of a throughout journey by rail, or would a throughout route by sea or inland waterway, and by rail,—in fact a combined journey—be included? For my part, I can ill understand that journeys effected by other than rail routes should be brought under the terms of a railway convention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I trust that every delegation here will associate itself with the remarks made by the Italian Delegate, and that, as far as either the Transit Convention or the Railways Convention is concerned, there will be no misunderstanding on the question of commercial differentiation.

With regard to whether it is a question of a throughout journey effected by rail only or by rail and by inland waterway or maritime route, I am not competent; but I am sure that all the delegates agree with me in thinking that the words *throughout route* refer exclusively to a throughout rail route.

With regard to the third point—that raised by the Brazilian Delegate—he can receive full satisfaction, as he himself suggests, if not in this article, then in the Final Protocol.

As for Colonel Etienne's proposal, we are ready to accept it, and accordingly, before the examination of Articles 4 and 5 is concluded, Colonel Etienne, M. Sinigalia and M. Lankas—subject to the consent of the Chairman, and of a decision on the part of the Conference—might be asked to meet for a few minutes in order to complete the text. A vote could then be taken upon it. That is the proposal which I would make to the Committee.

M. POLITIS (Greece; speaking in French). — Before a vote is taken on Article 4, I will go back to the point which was raised by the British Delegation on the subject of the application of tariffs. Would not the Chairman put to the Committee the question whether it agrees to state that tariffs on different routes may vary in accordance with considerations of nationality?

M. WINIARSKI (Poland; speaking in French). — That cannot be done.

M. SATAKE (Japan). — The amendment proposed by the Japanese Delegation is of the simplest; it consists in adding at the end of the first paragraph of Article 4 the words *subject to the above-mentioned principle of equality.* May I be allowed to explain this amendment? There is no need here to point out the meaning of the expression *above-mentioned principle of equality;* it is, I think, the fundamental principle of Article 4 which stipulates that—as has often been repeated elsewhere—no differentiation shall be made in respect of tariffs on account of the nationality of passengers, the ownership or commercial origin of goods, or the flag or ownership of vessels. I believe that this is also understood to be the underlying principle of the establishment of local tariffs, or combined rail and sea tariffs, and I do not see why it should not be so conceived. But, in order to make it clear, the Japanese Delegation thinks it advisable that this should be distinctly laid down by means of the text which I have read, the object of which is to avoid any misunderstanding with regard to the application of the last part of the first paragraph of Article 4. According to the present wording, it might be supposed that the principle of equality laid down in this paragraph, by which any discrimination in conceding facilities or establishing tariffs is prohibited, is not to be applied where local tariffs or combined rail and sea tariffs are concerned, as laid down at the end of the paragraph. I trust, therefore, that this amendment will be adopted by the Committee.

The CHAIRMAN. — If no one else wishes to speak on Article 4, the best way, I think, would be to vote on the question whether the amended Article 4, as presented by the Czecho-Slovak Delegation, should be adopted in principle and referred to a sub-committee, which could consider all the amendments handed in to-day, and, after deciding how far they are in accord with the principle of the article, could proceed to draft the final text.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It would be better to take a vote on the principle of the Czecho-Slovak proposal as amended by the Italian Delegation, and also on the suggestions made by M. Étienne.

M. POLITIS (Greece; speaking in French). — There is a third point to which I drew the attention of the Committee a short time ago. The vote should have equal

reference to the Italian amendment, the proposals of M. Étienne and the original British motion. These questions are of great importance. A vote cannot be taken on the principle so long as this fluctuates according to whether tariff variations on account of nationality are allowed or disallowed.

Mr. G. L. COLVIN (Great Britain). — The British Delegation associates itself with the Greek Delegation on this point.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — The Portuguese Delegation has supported the Brazilian amendment, and would like to know what has become of it. Will it be discussed with the article or is it dropped?

The CHAIRMAN. — The Brazilian amendment would go to the Sub-Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In order to avoid any misunderstanding, I should like to draw the Committee's attention to the marked difference in principle which exists between the proposal of the British and Greek Delegations and that of the other delegations. If we vote for both pinciples simultaneously the Sub-Committee will have no indication as to the lines on which it should work. If we wish to make the discussion clearer, we must vote first on the principle which is supported by the British and Greek Delegations; we could then take a decision on the Czecho-Slovak amendment, which is supported by the other Delegations.

M. POLITIS (Greece; speaking in French). — I agree with M. Avramovitch in advocating this division.

M. VELASQUEZ (Paraguay; speaking in French). — It is time that we brought to an end our discussion of Articles 4 and 5. I am in favour of the Chairman's proposal, and M. Avramovitch's observation also appears to me justified.

In order to facilitate the work of the Sub-Committee which is to be set up, the Committee must know the fate-of the Japanese amendment; the question should therefore be definitely settled now.

The CHAIRMAN. — We could vote first of all on the Japanese amendment and then upon the words : *...over the same throughout route, in the same direction and in the same conditions,* which the Swedish Delegation proposes to add, and to which objections are raised by both the British and Greek Delegations. A vote could then be taken on the principle contained in the Czecho-Slovak amendment to Article 4.

M. POLITIS (Greece; speaking in French). — There is no question of omitting the phrase *over the same throughout route...* but only of modifying it.

The CHAIRMAN. — We can also vote on the British amendment as it stood; but would it not be better to begin first of all with the Japanese amendment?

Mr. G. L. COLVIN (Great Britain). — Am I to understand that the other amendments which have been handed in, in common with the Japanese amendment, apply equally to the Czecho-Slovak and British amendments?

M. SINIGALIA (Italy; speaking in French). — I should like to impress upon the Committee the importance of this vote. Were the Swedish amendment adopted, this would amount to omitting Article 4 altogether.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is for this reason that we request an immediate vote.

M. SINIGALIA (Italy; speaking in French). — I should much prefer to omit the last part of Article 4,—it would be more logical.

The CHAIRMAN. — I will put to the vote the amendment of the Japanese Delegation.

The amendment was not adopted.

I put to the vote the amendment of the British Delegation.

The British amendment was rejected by 19 votes to 5.

I put to the vote the amendment submitted by the Czecho-Slovak Delegation.

The amendment was adopted by 19 votes to 2.

It is understood that the Czecho-Slovak amendment is accepted in principle and is referred to a sub-committee, which will consider it simultaneously with the other amendments on the same article, which have not been discussed to-day, including the observation made by the Director of the International Office at Bern.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is of course understood that there is no question of any new amendments which might be handed in, but only of those emanating from the Italian Delegation and from Colonel Étienne.

The CHAIRMAN. — It is only a question of amendments handed in during this meeting,— in particular, the Brazilian amendment.

If there is no objection, I suggest that the Sub-Committee which we are to appoint to deal with these texts might include representatives of Belgium, Brazil, Chile, Czecho-Slovakia, Great Britain, Italy, Roumania and Sweden, and M. Étienne.

The meeting adjourned at 1.15 p.m.

THIRD MEETING OF THE COMMITTEE ON RAILWAYS

(Monday, April 4th, 1921, at 10 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 4 — PROPOSAL OF INTERNATIONAL LABOUR OFFICE
DISCUSSION OF ARTICLE 5 — DISCUSSION OF ARTICLE 6

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 4

The CHAIRMAN. — We will resume the discussion of Article 4, which was referred to a Sub-Committee. M. Lankas, the Rapporteur, will speak.

M. LANKAS (Czecho-Slovakia, Rapporteur; speaking in French). — After having carefully studied the text of Article 4 and the amendments proposed to it, the Sub-Committee, the members of which were animated by a spirit of conciliation, was not slow to find a formula giving satisfaction to everyone. The text proposed by the Sub-Committee reads as follows :—

Transport Tariffs and Facilities.

The concession of transport facilities or the establishment of tariffs and their adoption and application as regards passengers, subjects of any one of the Participating States, or goods coming from or proceeding to any one of the Participating States, over the same throughout route, in the same direction and in the same conditions, shall not depend either upon the nationality of the passengers, or upon the ownership or commercial origin of the goods, or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport rates shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more passengers or to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the existence and establishment of different tariffs for internal, import, export or transit traffic, having regard to the traffic conditions and to commercial competition between transport routes, nor does it affect the question of combined rail and sea tariffs.

The Sub-Committee took as a basis the amendment of the Czecho-Slovak Delegation; it had also to consider three other amendments.

The first, which was proposed by M. Étienne, was to insert after the words *having as its object the granting* the words *to one or more passengers,* in order to indicate clearly that the article also applies to passenger traffic. This amendment was adopted and the words were added to the text.

The second amendment before the Sub-Committee was that submitted by the Italian Delegation, suggesting that the text of Article 4 of the Convention on Railways should be brought into accord with that of Article 4 of the Convention on Freedom of Transit, and that with this object the following phrase should be inserted : *having regard to traffic conditions and to commercial competition.* Certain Delegations took the view that this addition was not necessary, but the Sub-Committee ultimately agreed to insert the phrase in Article 4, not at the suggestion of the Czecho-Slovak Delegation,

in the first paragraph, but in the second; in order to conform exactly to the text of Article 4 of the Transit Convention, it was necessary to leave untouched the passage relating to the principle of equality of treatment. It was for this reason that it was found better to insert the phrase in the second paragraph, and the Sub-Committee came to a unanimous agreement with regard to the wording.

There was yet another amendment to be considered by the Sub-Committee, emanating this time from the Belgian Delegation (1). M. Hanrez had proposed that there should be inserted in what is now paragraph 2, after the word *preventing*, the words *the existence and establishment of tariffs.* It was unanimously decided by the Sub-Committee to adopt these words, in order to indicate clearly that this article allows full liberty, not only in the future but also at the present time, and that it in no way affects freedom to establish local, import and export tariffs. In this connection, in order to make assurance doubly sure, emphasis was laid by several delegations on the fact that, in their view, every country may establish different tariffs with the object of facilitating the transport of certain internal products which are open to competition by foreign products of a similar kind, in view of the necessity of assisting certain industries by means of tariff reductions. Other delegations, again, laid stress on the idea that every country remains free, as long as it respects the principle of equality, to establish its import, export and local tariffs as best may correspond with its own interests. There is nothing new in this idea, which was enunciated in the *Green Book* when the matter was discussed at Paris. Certain Delegations, however, desired to emphasise their view,—without, of course, altering the text of the article.

Lastly, the Sub-Committee dealt with the Brazilian amendment (2) which read as follows :—

This provision may be inapplicable when the owners or charterers of the vessels employed before or after the transport by rail establish differential freight scales.

The Sub-Committee afforded most careful consideration to this amendment, and endeavoured to ascertain its exact scope; it was of opinion that the principle embraced not only the part of the transport accomplished by rail, but the whole of the transport,—in fact the whole journey, both by rail and sea. According to this amendment a State would have the right to withhold the benefits of the Railways Convention should another State fail to accord equitable commercial treatment,—that is to say, should freights be differentiated to such a degree that the principle of equality was seriously infringed. There were members of the Sub-Committee who considered that the Brazilian view was up to a certain point a fair one; but the Sub-Committee decided that the question exceeded the competence of the Barcelona Conference, and would be better regulated in the form of a *vœu* to go in the Report on the Transit Convention, and it was accordingly decided that the amendment should not be inserted in Article 4. Moreover, having learnt that the amendment which had been submitted in connection with the Transit Convention would be considered after the Barcelona Conference, the Brazilian Delegate withdrew his amendment; whilst the Sub-Committee, having also studied it in respect of its applicability, decided unanimously that in practice it would be found almost impossible to apply the principle therein contained.

With the Chairman's permission, I will complete my Report in a few words.

During the study of the Brazilian amendment it was pointed out that the Brazilian Delegation had already received satisfaction with regard to combined tariffs. It was also pointed out, with justice, that in the second paragraph of the Sub-Committee's text it is explicitly stated that *this stipulation does not... affect the question of combined rail and sea tariffs,* and that in effect, therefore, the question of combined tariffs is entirely left aside by this article, and is completely reserved for decision solely by the States concerned.

M. LOISEAU (France; speaking in French). — At the end of the last meeting, I requested our Chairman to be good enough to allow me to speak before the vote was

(1) See p. 52.
(2) See p. 56.

taken on Article 4, in order to put a question to M. Étienne, whose ability and courtesy have already won such good-will on the part of this gathering. It is a question of the private agreements to which reference is made in this article, by the terms of which they are declared to be *expressly forbidden and considered null and void.* In the course of a previous speech, M. Étienne has already reminded us that such agreements are likewise prohibited, both in the Bern Convention on the subject of goods, and in the draft provisions relating to passenger traffic which it is proposed to add to this Convention. The point to which I desire to call the attention both of M. Étienne and of our Committee, before Article 4 is put to the vote, is whether the efficacy of this prohibition is in proportion to the solemnity with which it is proclaimed,—in other words, what is the effective and usual penalty for infringing it? The penalty laid down for such infringement is that the agreement in question shall be declared null and void. I do not consider it strong enough. In civil law when a contract concluded in defiance of the law is declared by that law to be null and void, I am ready to admit that this constitutes a penalty which will touch very closely upon the interests of the parties concerned. When for example the law prohibits agreements with regard to succession, or stultifies a donation of real estate because the procedure adopted was irregular, the parties are certain to obey because, were they to disregard the law, they would be bound to fall short of their aim, and would be exposed to consequences detrimental to themselves or to their successors. This fact in itself constitutes the penalty—the *pain,* if you like, for their disobedience, but here, in the circumstances provided for under Article 4, as also under the terms of the Bern Convention, the prohibited agreement may resolve itself into an act of collusion, which, if it is not exposed, allows the parties to reap the expected benefits, and which, if it is found out, does not in reality affect either of them prejudicially.

A railway company, in order to obtain a firm's custom, makes an arrangement with it which amounts to a rebate upon the official published rate, and the fact comes to light. What does it matter to the company and to its customers if their contract is declared "null and void"? There is no question for these offenders—these *accomplices,* I was going to say, of pleading the validity of the arrangement *inter se;* they get off with merely dropping the contract, and with the option of subsequently concluding another one,—or the same,—taking care the next time to cover up more carefully the tracks of their illicit operation.

What would really be of some use would be to lay down a penalty according effective guarantees to third parties (and by third parties I mean other railway companies, whose interests are adversely affected by such operations), and honest—I was going to say artless—traders who stand by the published rates, and into whose heads the idea of obtaining an illicit concession never enters. I see nowhere any provision for a penalty of this kind, either in the Bern Convention, or in the text now before us. Is this silence deliberate? Is it fully realised that the prohibition is thereby rendered pretty well ineffectual, and that, if I may venture to use a homely but graphic phrase, the thunderbolts launched against special agreements by these stipulations make a noise without touching anyone?

That is the question which I would submit to the authority and experience of M. Étienne.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — As M. Loiseau has explained, the Bern Convention forbids special agreements having as their object the granting to certain persons of privileges not conceded to all. I must state that, up to the present, no complaints have been received by the Central Office on the subject. This probably results from the fact that such agreements are concluded with some secrecy. Perhaps I shall be able to give satisfaction to M. Loiseau by telling him that I have noted his question, and that I hope the International Office will not fail to bring it up at the next Conference for the revision of the Bern Convention.

M. LOISEAU (France; speaking in French). — In view of the importance of the question, I will ask, in conjunction with the Belgian Delegate, that a full report of my question and M. Etienne's answer be included in the records.

M. CARACOSTEA (Roumania; speaking in French). — I should like to know exactly what is desired by our French colleague. Does he wish to eliminate the clause or to supplement it by laying down penalties? If he wishes to omit the clause then I am in opposition; I know that there are companies which make special agreements which are considered null and void because they are illicit. You say that you do not know this, it is true, but when you know it you will be able to appeal to the Advisory and Technical Committee, which will take the necessary punitive measures.

M. LOISEAU (France; speaking in French). — I do not wish to delete anything, nor do I ask for any penalties. I merely consider it essential that the attention of the Conference should be drawn to the point. M. Etienne gave a completely satisfactory reply when he said that he would submit the affair to the International Office at Bern.

The CHAIRMAN. — M. Loiseau's question and M. Etienne's reply will appear in the records. We will now proceed to vote upon Article 4 as drafted by the Sub-Committee.

M. BARBOZACARNEIRO (Brazil; speaking in French). — I should like to declare that the Brazilian Delegation reserves the option to propose that, should the Sub-Committee which is dealing with this question not arrive at any agreement upon a general formula applicable to all conventions, a reservation should be inserted in the Final Protocol concerning reciprocity of treatment for maritime transport.

The CHAIRMAN. — This will be noted in the records. As no one else wishes to speak I will put Article 4 to the vote in the form proposed by the Sub-Committee.

Article 4 was unanimously adopted.

PROPOSAL OF THE INTERNATIONAL LABOUR OFFICE

The CHAIRMAN. — The Committee has been apprised by the International Labour Office of the following Draft Recommendation :

The Conference on Communications and Transit,

Recognising that it is highly desirable to make the lives of the blind as normal as possible, and to assist in providing them with means for contributing to the general productiveness and for gaining their livelihood by their labour;

Recognising that the difficulties which sometimes prevent the blind from travelling by rail, and particularly the fact that they must always be accompanied when travelling, are an obstacle to the attainment of this object;

Recommends :

(*a*) That the administrative bodies of public means of transport in each country should give special consideration to the position of blind workers travelling in the exercise of their vocation;

(*b*) That they should, in particular, consider the possibility of authorising blind workers, travelling in the exercise of their vocation, to be accompanied by a guide without having to pay two fares, since this increases the pecuniary disadvantage under which the blind labour, as compared with other workers;

(*c*) That they should agree to give international recognition to some form of legal certificate, which should be accepted as evidence of the status of blind worker, with a view to the concession of any facilities which it may be possible to grant.

This Draft Recommendation emanates from the National Office for the Assistance of Blind Workers. No doubt the Committee will have to consider whether it is within its competence to deal with it; but M. William Martin, representing the International Labour Office, is here present and would like to be accorded a hearing. Is it the wish of the members of the Committee that he should address them?

M. CARLIN (Switzerland; speaking in French). — I consider that a useful and just purpose would be served if we accorded a hearing to M. William Martin, speaking on

behalf of the International Labour Office. With his explanation as a basis, we could then enter upon a more thorough discussion of the subject.

M. CARACOSTEA (Roumania; speaking in French). — I believe that the Draft Recommendation before us does not concern the work upon which we are at present occupied. Almost every country in the world is prepared to make sacrifices in favour of the blind, but I doubt whether special stipulations could be included under an international scale of rates for the blind and their companions. It depends upon the circumstances whether any reduction in fares is afforded for the blind, as also for their companions. But should a reduction be made for a blind traveller who is well-to-do? In my opinion the question should remain within the province of each individual railway company, and not be discussed by us here.

The CHAIRMAN. — The only question is whether the matter is or is not within the Committee's competence. I propose that a hearing be simply accorded to M. Martin, representing the International Labour Office.

M. CARACOSTEA (Roumania; speaking in French). — We will hear him with pleasure.

M. William MARTIN (representing the International Labour Office; speaking in French). — Mr. Chairman, Gentlemen, I must first of all thank the Committee for its kindness in allowing a representative of the International Labour Office to speak in order to bring before you the arguments which seem to us to militate in favour of the *vœu* now before the Committee.

Allow me to say at the outset that this *vœu* is a witness of the hopes which throughout the world hang upon your labours; for it was the French organisation of the National Office for the Assistance of the Blind which appealed to the International Labour Office, as the natural organ for the protection of all workers under difficulty, asking it to lay before you a request with a view to according facilities to blind workers. The International Labour Office, which has for some time past been organising a department for labour questions in respect of the disabled, officially transmitted this request to the Secretary-General of the League of Nations for submission to you on March 4th last.

You have before you the text of the *vœu* proposed by the International Labour Office. As the Chairman has been good enough to read it aloud, with your permission I shall not take up your time by reading it again. I wish merely to emphasise very briefly the fact, which I consider has a certain importance, that this is not a recommendation but a *vœu*. I feel impelled to make this distinction because, in the legal terminology of the League of Nations, the word *recommendation* has a slightly stronger force than the word *vœu ;* and it is important that the question should be exactly stated. It is a *vœu* which is now before you.

I feel that I should be exceeding the privilege which you have granted me if I dealt with the question of competence, and I therefore do not propose to do so; but I am sure that you will not mind my appealing to you to settle this question with the greatest possible degree of liberality. As I have already said, it is because public opinion in every country, without perhaps a very clear idea as to the extent of the competence and as to the limited powers of this Conference, has been inspired by a great hope to follow the course of your labours, and believes that it may result in advantages of travel, both for individuals and for various classes of the population,—it is for this reason, I say, that this request is submitted to you. The whole work of the League of Nations rests, in the last resort, upon public opinion, and upon the conception entertained by the peoples as to what is being done here, and the Conference cannot therefore remain indifferent to these hopes, which, allow me to tell you, will receive fuller satisfaction by the medium simply of this *vœu*, which is to have a practical application to individuals, than through that of legal principles of which the issue might be infinitely vaster, but which might perhaps meet with less speedy comprehension on the part of public opinion as a whole.

After these few preliminary words, I should like, with your permission, to enlighten you on the subject of the practical scope of the proposal in question. The results

obtained in various countries by the re-education and placing in employment of the disabled have proved that the greater number of the blind are capable of work. It has been estimated that their output is about 50 % of that of a normal workman, in what are known as "blind occupations", such as basket-making, brushmaking and chair-bottoming. In certain cases their output may even equal that of an ordinary workman,—for example, in the manipulation of machine tools in factory-work. In view of the experiments made during the war, the various organisations were led to ask that all the blind should be accorded the benefit of the professional training and facilities for gaining employment which had hitherto been reserved for men blinded in the war, whilst these experiments have also occasioned an important movement for the systematic assistance of the blind by means of work.

Two questions will occupy the Conference in connection with the *vœu* submitted by the International Labour Office; what is the number of blind who may benefit from the privileges which it is proposed to offer, and by what practical means, in order to avoid any abuse of the system, could blind workers be distinguished? There are no complete statistics of the blind throughout the world, but there are partial statistics for certain important countries. The population of Germany includes 35.000 blind, of which 4,000 are men blinded in the war; that of France, 27,000, of which 3,000 were blinded in the war; and that of Great Britain 30,000, including 2,000 blinded in the war. What proportion of this number may be considered as workers? Taking as a basis the English statistics, we arrive at the result that about 60 % of the blind are incapable of work on account of youth or infirmity. This gives a maximum of 40 % of the blind in each country who might be allowed to benefit by special privileges. Naturally, however, the number of journeys made by blind workers in the exercise of their vocations is not likely to be large. About three-quarters of them have been re-educated in special institutes which, at the conclusion of their apprenticeship, grant them certificates of proficiency. With regard to those of the blind who have not attended a special institute, but who nevertheless exercise a vocation, some authority might be made responsible for issuing them a certificate to this effect.

In Germany there are special departments for dealing with the blind in the public Employment Exchanges of important centres such as Berlin and Dresden. In England, the creation of a National Committee and of district and local committees under the control of the Ministry of Health, having as their task to draft the blind into institutes for re-education, to place them in situations, and to procure work and raw materials for those of them who work at home, is at present in course of accomplishment. In France, the National Office for the Assistance of Blind Workers is exerting itself in the same direction. It may be stated that the number of workers who would be in a position to benefit by the favourable treatment contemplated is not sufficiently large to constitute a burden on the administrative bodies concerned. Qualified authorities could without much difficulty be appointed to certify blind workers as such, and in this way any abuses could be avoided.

Some countries, such as France, have already entered on the path which the blind themselves have suggested to the Conference, but only men disabled in the war have benefited. Blind civilians can only obtain free travel passes when they are in want, —a condition which completely changes the character of the benefit accorded to them.

I should like once more to point out that the International Labour Office does not ask in the least that the Conference should exceed its powers by setting up as a rival to the administrative bodies in each country which are responsible for the carrying out of railway tariffs of every kind. It only asks that the Conference should register its sympathy at least by encouraging the great work of re-education of the blind, which has been undertaken in order that their lives may revert to as normal conditions as possible. The International Labour Office, whose views I represent, ventures to hope that the Conference on Communications and Transit will not remain insensible to the fate of blind workers, which is so eminently worthy of interest.

The CHAIRMAN. — I am sure that we all wish to thank M. William Martin for his interesting statement. I do not propose to ask the Committee to delay its work by discussing the matter at present but I hope that the various delegations will consider

carefully whether we are competent to deal with the problem, in the first place at this Conference, and in the second place in this Committee; we can decide the question when the meeting is finished.

DISCUSSION OF ARTICLE 5

We will now pass to the discussion of Article 5. I will read the text :

Provisions immediately compulsory.

In the absence of existing conventions, and until such time as the conventions referred to in Article 4 have been concluded, the provisions defined in the aforementioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

To this article two amendments have been submitted, one by the Czecho-Slovak Delegation (1) and the other by the British Delegation (2). You may remember that there was a third amendment, which was submitted by the Chilian Delegation at an earlier meeting (3), but the Chilian Delegate has told me that he does not wish to press it. I think it will be best to work on the basis of the Czecho-Slovak amendment.

I should like to call M. Lankas' attention to the following point : in the English text, the introduction of the word *certain* would appear to limit very much the scope of the amendment; is it absolutely necessary to retain this word?

M. LANKAS (Czecho-Slovakia; speaking in French). — My remarks will bear chiefly upon the mention made in our amendment of *certain groups of contiguous territories*. As I said in my statement at the General Discussion (4), it appeared to us that it would be well to include in the Convention a provision allowing regional and special Conventions to be concluded; they would be special in the sense that they would apply to certain groups of limited territory. Europe, for example, or at least Continental Europe, would be considered as a limited territory. That is what we mean by the words *certain groups of contiguous territories*. To us, the words *certain contiguous territories* by themselves would have no meaning whatsoever. I do not know whether the choice of the word *certain* has been a good one, but if the amendment is adopted, I will fall back upon the Drafting Committee to find a better one. Article 5 says nothing more than what was said at the beginning of the old Article 4, namely, that :

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles... This for certain groups of territory.

I think it is necessary to emphasise again the fact that if we adopt Article 5 in the form proposed by us, Article 5 of the Draft is no longer necessary. Since Article 4 in the form in which we have adopted it is independent, and cince its application is compulsory as soon as the present Convention comes into force, it appears to me that this fact need not be repeated. Our chief object in drafting Article 5 as we have done is to indicate that special Conventions are to provide for the application of the principles enunciated in Articles 1 to 4. These Conventions will apply to limited groups of territories; they will be regional, not world-wide Conventions.

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(1) The text of the Czecho-Slovak amendment reads as follows :
" Omit this article and substitute the following :
" 'Special Conventions. In the absence of relevant existing conventions, special conventions shall be concluded to give effect to the principles laid down in the preceding articles in respect of certain groups of contiguous territories.' "

(2) See footnote (1), p. 51.

(3) See p. 55.

(4) See p. 22.

M. HANREZ (Belgium; speaking in French). — On behalf of the Brazilian, Chilian and Belgian Delegations, I propose, in order to make the tone of this article less imperative, to insert the words *as far as possible*. The text would then read as follows :

In the absence of relevant existing conventions, special Conventions shall be concluded to give effect *as far as possible* to the principles laid down in the preceding articles in respect of certain groups of contiguous territories.

M. LANKAS (Czecho-Slovakia; speaking in French). — I must emphasise the fact to the Committee that if we accept the amendment proposed by the Belgian Delegation, it becomes absolutely necessary to repeat the words of the old Article 5 and to say : *In the absence of relevant existing conventions, special conventions shall be concluded to give effect as far as possible to the principles laid down in the preceding articles.* We must then add : *Nevertheless, the provisions of Article 4 shall be considered as binding as from the coming into force of the present Convention.* If we do not do this, Article 4 would be so much weakened that it would cease to have the meaning we intended.

M. SINIGALIA (Italy; speaking in French). — I am in complete agreement with the view expressed by the Czecho-Slovak representative. The addition of the words proposed would destroy the effect of Article 4.

I am not quite clear as to the intention expressed in the words *as far as possible.* Is it desired to make exceptions to the principles laid down in Article 4? If so, it would have been easy to say this in the text of Article 4 itself; but now that Article 4 has been unanimously adopted, I do not think this can be done.

Mr. G. L. COLVIN (Great Britain). — I gather that we are all really in agreement in principle; it is now largely a question of wording. I have no particular objection to accepting the proposal made by the Belgian Delegation, subject to the addition of the words proposed by M. Lankas. There is another alternative, however, and that is the amendment put in by the British Delegation; it appears to me to meet some of the difficulties. Article 4 of the British proposal (which now corresponds to Article 5) reads as follows : *In the absence of relevant existing conventions, special Conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and* 3. This text would carry out exactly what was proposed by the Belgian Delegation and by M. Lankas. I do not mind what method is adopted; it is not an important matter, but largely a question of wording.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would observe that there is a difference between the British and the Czecho-Slovak amendments. In the first place, the British amendment makes no mention of contiguous territories, and in the second place, it only applies to Articles 1, 2 and 3. If these articles only are quoted, it cannot remain in doubt but that the terms of Article 4 are to be applied and are to become binding immediately upon the conclusion of the Convention.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — In agreement with the Delegates of Belgium and Chile, I declare our willingness to support the British amendment. We would propose that it take the place of the Czecho-Slovak amendment, and that a mention of Article 4 be also made.

M. HANREZ (Belgium; speaking in French). — I consider that it would be better to say : *In the absence of relevant existing Conventions, the High Contracting Parties recognise the necessity of providing as far as possible for the application of the principles enunciated in Articles 1, 2, 3 and 4, by means of special Conventions.*

M. LANKAS (Czecho-Slovakia; speaking in French). — Were the Belgian Delegate's proposal accepted, it would completely alter the tone given to Article 5 in the *Green Book* text. According to the latter, special provisions concerning equality of treatment in respect of rates are to come into force immediately the Convention is concluded.

If you introduce the words *as far as possible*, you rob Article 4 of much of its force. The Czecho-Slovak Delegation cannot agree to this change.

M. HANREZ (Belgium; speaking in French). — The object of our proposal is to soften down the tone of Article 5, which we consider too imperative. Special Conventions exist at the present time which cannot be denounced or abrogated at a moment's notice; the matter calls for careful study, and we cannot devote ourselves to it until we are back in our respective countries. We have no intention whatever of escaping from any obligations—our object is that pursued by the Conference itself; but it seems to us arbitrary to say in this imperative fashion *shall provide in every case*. What we ask for is some softening down of the terms, in order to allow of a period of transition during which those existing Conventions which cannot be denounced immediately may be carried out.

M. LANKAS (Czecho-Slovakia; speaking in French). — I accept the British proposal : *In the absence of relevant existing Conventions, special Conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3*, provided the words are added : *in respect of certain groups of contiguous territories.*

Mr. G. L. COLVIN (Great Britain). — I am quite in agreement with that proposal. The only modification which I would suggest is to omit the word *certain;* perhaps its place could be taken in the English text by the word *suitable.*

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree to delete the word *certain.*

The CHAIRMAN. — Does M. Hanrez accept the British amendment, or does he maintain his own proposal?

M. HANREZ (Belgium; speaking in French). — We maintain our proposal.

M. CARLIN (Switzerland; speaking in French). — As, under the condition indicated, the Czecho-Slovak Delegation supports the British amendment, and as the British Delegation accepts the addition to the text proposed by the Czecho-Slovak Delegation, we agree. I would, however, draw your attention to a question of drafting. As the British Delegation appears to cavil at the word *certain*...

M. LANKAS (Czecho-Slovakia; speaking in French). — We have agreed to the deletion of the word *certain.*

M. CARLIN (Switzerland; speaking in French). — ...we might say *in respect of groups*...

I request further that the word *cohérents* in the French text should be done away with, and that we should say : *groupes de territoires contigus.* The word *cohérent* usually conveys something logical, but in this context it becomes incoherent.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I be allowed to observe that I drew the word *cohérent* from another proposed amendment, the object of which was much the same as our own. I view with satisfaction the Swiss Delegate's success in finding the expression which I was seeking.

The CHAIRMAN. — These suggested alterations are in reality no more than drafting changes, and are subject to the British and Czecho-Slovak amendment being accepted. I think it would be desirable to vote now upon the Belgian amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — In voting on the British and Czecho-Slovak amendment we are at the same time voting on the Belgian amendment, which surely only requires the addition of the words *as far as possible* in respect of Article 3, but not in respect of Article 4. In the Sub-Committee the Belgian

Delegation accepted Article 4 in its obligatory form, and I cannot therefore believe that it desires to limit the application of the article.

M. HANREZ (Belgium; speaking in French). — No, Article 5 has a general scope; it mentions neither Article 1 nor Article 2 nor Article 3. As I read the text of the Czecho-Slovak amendment, the words *shall be concluded to give effect to the principles laid down in the preceding articles* signify *to give effect immediately.* Conventions exist which cannot be denounced at a moment's notice; they are binding during a stated period. There is no question of derogating from the principles laid down in the article. We ask that the words *as far as possible* be added in order to enable these principles to be applied where possible.

M. LANKAS (Czecho-Slovakia; speaking in French). — There is some confusion here. I ask the Belgian Delegation whether it wishes the terms of Article 4 to have a general application or to be applied only as far as possible.

M. HANREZ (Belgium; speaking in French). — As far as possible. We will apply them gradually as and when we can.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot agree with this view; it is in formal opposition to the attitude adopted by the Sub-Committee.

M. HANREZ (Belgium; speaking in French). — Will you accept in place of the words *as far as possible* the words *regard being had to existing Conventions?*

The CHAIRMAN. — Will M. Lankas read the text of Article 5 with the Czecho-Slovak and British amendments?

M. LANKAS (Czecho-Slovakia; speaking in French). — This is Article 5 :

In the absence of relevant existing Conventions, special Conventions shall be concluded to give effect as far as possible to the principles laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We all agree as to the principle; I think there is merely a misunderstanding. The Czecho-Slovak Delegate put a question to M. Hanrez, who replied, yet I have the impression that there is a misunderstanding between them. M. Hanrez wishes to apply Article 4 as adopted...

M. HANREZ (Belgium; speaking in French). — Exactly.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — ...but he rightly wonders how the stipulations of this article could be applied immediately, on account of Conventions already in force...

M. HANREZ (Belgium; speaking in French). — That is exactly it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — ...the date of whose possible supersession by other conventions cannot possibly be foreseen. I think this must be M. Lankas' idea. It would certainly be well to accord a time-limit for the application of the article. We must find a form of words. I will not suggest any; I simply wished to throw light upon the position.

M. HANREZ (Belgium; speaking in French). — I believe that thanks to the sagacity of M. Avramovitch, we are in agreement. Instead of saying *as far as possible,* we will add to the Czecho-Slovak text the words *as soon as possible.*

Mr. G. L. COLVIN (Great Britain). — I am afraid that this wording would lessen the scope of Article 4.

M. POLITIS (Greece; speaking in French). — Certainly, in adopting this wording we are touching on Article 4 which, be it noted, is independent of the special Conventions to be concluded. It is an article which contains provisions both general and binding.

The CHAIRMAN. — Could not the Belgian Delegate adapt the formula which he has proposed to fit the British amendment?

M. HANREZ (Belgium; speaking in French). — I do not mind as long as the idea of my proposal is applied.

M. LANKAS (Czecho-Slovakia; speaking in French). — It will be necessary to go back a little on the original draft. In that text there were three articles in the form of recommendations, and one article making provision for their strict application—namely, Article 4, in which it was stated that special Conventions would provide for the application of the principles enunciated in Articles 1, 2 and 3. But it was laid down in the old Article 5 that the provisions defined in Article 4 were to be *binding... as from the coming into force of the... Convention.* The situation has now changed. The question of equality of treatment in respect of tariffs is dealt with in an independent article, where the rule is laid down imperatively; it is therefore unnecessary to repeat it in another article such as Article 5 of the Draft.

We have proposed a new Article 5, which stipulates simply that it will be necessary to conclude special Conventions on the subject of railways, regional conventions, not to apply throughout the world, but only to certain groups of territories. That is the fundamental idea of our article, and I believe that you have all accepted it, with certain modifications in the wording. M. Hanrez wishes to add *as far as possible.* This we cannot admit, because it would seriously restrict the application of Article 4. We announced our acceptance of the British amendment stating that the limitation *as far as possible* will apply only to Articles 1, 2 and 3; it in no way affects the application or scope of Article 4. M. Hanrez now proposes another formula which also represents a restriction upon Article 4; he proposes to insert the words *as soon as possible.* I now consider that after all we ought not to accept this amendment either, because, contrary to what I believe to be the opinion of the majority of the Committee, it postpones the application of Article 4. I will therefore reconsider my original proposal, and will propose the adoption of the British amendment, supplemented by the phrase concerning contiguous territories. I am of opinion that we cannot accept the Belgian amendment, all the more because M. Hanrez received satisfaction in the article which mentions the *existence of tariffs* and which indicates that there is no obligation to alter existing tariffs immediately.

The CHAIRMAN. — I think the issue is now clearly defined. It is desired by the Belgian Delegate, contrary to the intention of the authors of the British and Czecho-Slovak amendment, to bring Article 4 into the purview of the addition which he proposes. Surely, therefore, we could now obtain a clear decision by asking the Committee to vote as to whether it accepts the Belgian view or not.

M. SINIGALIA (Italy; speaking in French). — Before voting I should like to say another word on this question. I think that after all I support fully the views put forward by the representative of Czecho-Slovakia. I should like to remind the authors of these amendments of the existence of Article 16 of the Convention, which accords them full satisfaction by granting all the time needed to make the necessary modifications in any Conventions the terms of which might not be compatible with those of our Convention. This fact may surely serve to convince them that there is no need to add the words *as soon as possible.*

M. HANREZ (Belgium; speaking in French). — I did not think that my little observation would lead to such a diffuse discussion. As long as the request made by Brazil, Chile and Belgium is reported in the records of the meeting and in the Report, then, as I am not to be allowed anything better, I will be content. I do not oppose a vote upon my motion if it is desired, but if it is considered sufficient to note it in the records of the meeting and in the Report, I will leave the decision to you.

The CHAIRMAN. — What is the opinion of the Committee? As M. Hanrez has not demanded a vote, will the Committee be content with his suggestion?

M. SINIGALIA (Italy; speaking in French). — The principle would remain. The principles upon which Article 4 are founded would be affected, even if not by an express provision, at least by a statement in the records of the meeting. The question is of sufficient importance to call for settlement by an unequivocal vote.

The CHAIRMAN. — Will not M. Sinigalia's view be met by the fact that we shall vote ultimately upon the combined British and Czecho-Slovak amendment?

M. SINIGALIA (Italy; speaking in French). — It comes to the same thing.

The CHAIRMAN. — Is it desired by the Committee to vote upon the text of Article 5 as agreed between the British and Czecho-Slovak Delegations?

M. POLITIS (Greece; speaking in French). — I ask that the article be read.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I also ask that it be read.

The CHAIRMAN. — M. Lankas will read the article as at present drafted.

M. LANKAS (Czecho-Slovakia; speaking in French). — The following is the new text of the article :

In the absence of relevant existing Conventions, special Conventions shall be concluded to give effect as far as possible to the provisions laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

M. POLITIS (Greece; speaking in French). — Before voting, may I suggest that it would be better and more logical to place this article before Article 4?

The CHAIRMAN. — We discussed the point raised by the Greek Delegate, and even voted upon it, last Saturday, and it was decided to place this article after Article 4.

M. POLITIS (Greece; speaking in French). — The day before yesterday we had not yet before us the text either of Article 4 or of Article 5. Until we had it, we could not take a decision, but now that we are acquainted with it, the natural thing is to place Article 5 before Article 4.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I have only one word to say. In connection with the expression : *In the absence of relevant existing conventions*, it will immediately occur to French-speaking persons to ask to what the word *conformes* (*relevant*) refers. Obviously, the intended meaning is : relevant to the present Convention. In the English text of the Draft, the words were simply : *In the absence of existing conventions ;* and I think that we could perfectly well put in the French text : *A défaut de conventions existantes.* If we keep the word *conformes*, we are obliged to give our grounds and explain it, and I suggest therefore that we should content ourselves with the words : *A défaut de conventions existantes,* which cover all possibilities.

The CHAIRMAN. — I think we could leave this point to the Drafting Committee. With regard to M. Politis' observation, I would ask the Committee to remember that I urged on Saturday that the question of the order of the articles should be considered. I insisted more than once upon this point, and I seem to recollect that it was then the unanimous desire of the Committee that the articles should follow the order in the Czecho-Slovak amendment. Two methods of re-considering the question still remain. In the first place, there is the Drafting Committee, which may say that, without altering the principles contained in the articles, these should follow a different order, and again there is the discussion in Conference. M. Politis will perhaps agree, now that he has drawn attention to the question, to leave its solution until later.

M. POLITIS (Greece; speaking in French). — It is not a fundamental point.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the point has been raised, may I be allowed to say why it appeared to us more logical for the article in question to follow Article 4. It is because we considered that the question of the application of Article 4 could be dealt with in the special Conventions, and it therefore appeared to us more logical to place the article dealing with special Conventions after Article 4. The Chairman is quite right when he says that it is a question for the Drafting Committee.

The CHAIRMAN. — When the Drafting Committee examines this article, it will have before it the remarks of M. Politis and M. Lankas.

I will put to the vote the Czecho-Slovak and British proposal as just read.

The proposal was adopted by 20 votes to 5.

DISCUSSION OF ARTICLE 6

The CHAIRMAN. — We now come to Article 6, which reads as follows :

Relations between the Permanent Committee and International Bureaux.

In those cases in which [existing or] future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Advisory and Technical Committee for Communications and Transit any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

To this article there is a note stating that *the Conference is recommended to include the words in brackets with a view to obtaining the consent of the Parties through the medium of this Convention, in cases where this is necessitated by the terms of Article 24 of the Covenant.*

There is then an amendment by the Swiss Delegation, which I will read :

Substitute for this article the following text :

« In cases in which existing or future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux, in so far as all the States adhering to the Convention by which they have been set up agree thereto, shall, in conformity with Article 24 of the Covenant, exchange directly with the Advisory and Technical Committee for Communications and Transit any useful information relating to the exercise of their functions, and shall submit an annual report to the League of Nations. »

The fate of this amendment appears to me to depend upon the inclusion of the words between brackets [*existing or*].

If these words are not inserted, the Swiss Delegation would agree to the text of the article; and it is for this reason that I think we should be wise to discuss the question whether these words are to be included or not.

M. CARLIN (Switzerland; speaking in French). — Following the suggestion made by the Chairman, I should inform you that the occasion for the Swiss amendment now

before you would arise only if the words between brackets in Article 6 were maintained. If then the Committee, and subsequently the Conference, decided that these words were to be expunged, there would no longer be any occasion for the Swiss amendment. It would give me great satisfaction to be able to withdraw it, and thus help to expedite the work of the Conference by not occupying your time.

I will summarise my remarks. If first the Committee, and then the Conference, decide to delete the words between square brackets [*existing or*], there will be no longer any motive for the Swiss amendment. If, on the other hand, these words are kept, I must retain the right to take up and explain my amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I very much regret not to be able to support the view taken by the Swiss Delegate. I must say that I do not quite understand the reasons for which the Swiss Government objects to the International Office exchanging with the Advisory Committee any useful information relating to the exercise of its functions, and submitting an annual report to the League of Nations. In my view this provision does not in any way impinge upon the competence of the Central Office; whilst it appears to me perfectly natural that a central office dealing with a question so important as that of the Bern Convention should be in touch with the League of Nations. Moreover, if you read over Article 57 of the Bern Convention, you will see that the Central Office is competent as follows :

In order to facilitate and assure the execution of this Convention, a Central Office of International Transport shall be set up, with the following functions :

1. To receive communications from each of the Contracting States and each of the Railway Administrations concerned, and to notify them to the other States and Administrations;
2. To collect, co-ordinate and publish information of every kind which is of interest to services connected with international transport;
3. To pronounce judgment at the request of the parties in any litigation against railways;
4. To investigate requests for the modification of this Convention, and, whenever occasion shall arise, to propose to the various States the summoning of a new Conference;
5. Lastly, to facilitate financial business necessitated by international transport services, collection of debts, etc., between the various administrations.

You will see, then, how important is this Central Office, and how near are its functions to those of the Advisory Committee, according to the Scheme of Regulations which we shall adopt in a few days. I believe it to be necessary that some degree of communication should be established between the Central Office and the League of Nations. Surely the Central Office, which has accomplished so much towards international progress, cannot see in the *Green Book* any attempt to detract from its prerogatives and its competence; and it is for these reasons that I consider that the Swiss Government and the Central Office might very well accept these provisions.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — May I be allowed to say a few words with regard to the subject of M. Lankas' speech? Considerable confusion appears to me to have arisen. In Article 6 a general mention is made of central offices, of international bureaux. There are not only the four offices at Bern,—namely, the International Office of Posts, that of Telegraphs, that of Literary, Industrial and Artistic Property and our own Central Office, but there is also the International Office of Weights and Measures at Sèvres. There is another International Office at Paris, whilst at Rome there is the International Office of Agriculture. There is one at Brussels, and yet another at The Hague. Then at Berlin there is, I think, the Anti-White Slave Traffic Office. In fact, there are eleven or twelve international offices. I believe that the Central Office, as such, is not a factor at all in the amendment proposed by the Swiss Delegation. The Central Office is here in quite an independent position. I wish to give a thorough explanation in order to avoid any misunderstanding. The discussion will have reference not to the Central Office alone, but to all the international offices at present in existence.

M. CARLIN (Switzerland; speaking in French). — I much regret that the remarks of the Czecho-Slovak Delegate should have led to a discussion which I should have

liked to avoid. M. Lankas has left entirely out of account Article 24 of the Covenant, which reads as follows :

There shall be placed under the direction of the League international bureaux established by general treaties, if the parties to such treaties consent.

There is no question of the Swiss Government, which has joined the League of Nations, setting up opposition to that article; it is precisely in view of its terms that we consider that the words added to Article 6 of the Draft Convention, and placed between brackets, are perfectly unnecessary.

I should also like to emphasise the fact that I am not speaking on behalf of the Swiss Government as such. I am speaking on behalf of the Swiss Government in its capacity as supervisor of International Offices at Bern; and as M. Étienne has told you, there are not only those at Bern but others as well,—one at Rome, one at Brussels, one at The Hague and one at Paris. All these are included under the terms of Article 24 of the Covenant. The existence of this Article 24 of the Covenant is the very reason for which I propose formally that you should consent to the deletion of these words. For Article 24 of the Covenant the question is already settled.

M. CARACOSTEA (Roumania; speaking in French). — May I be permitted to propose a modification to Article 6? I have been wondering why the text only refers to Article 4. Other articles are equally concerned; and this fact prompts me to suggest the following text :

In those cases in which existing or future conventions referred to *in the preceding articles* involve the creation...

M. LANKAS (Czecho-Slovakia; speaking in French). — I venture to repeat M. Etienne's own saying; there is indeed a confusion at the moment. There is no doubt that Article 24 of the Covenant does apply to all international offices, but there is also no doubt that our Convention can only apply to one or at the most two—I maintain only one—international office, and that is the Central Office of International Transport at Bern. Our Convention is, as you know, purely a railway convention; it has nothing to do with postal services. Accordingly, Article 6 cannot possibly apply to the International Post Office, the Central Office for Literary Property, or to the Office which has its seat at Rome. That is why I cannot for the moment see my way to accept the Swiss amendment.

M. CARLIN (Switzerland; speaking in French). — That is not under discussion.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the amendment has been submitted to us, I consider it my duty to speak on the subject. M. Carlin's draft stipulates, as a condition of exchange of information, the consent of all the participating States. This means that it would suffice for a single State to say "No", for it to cease to be possible to apply the terms of Article 6. What I fail to understand is why the International Office at Bern should oppose the exchange of useful information relating to the exercise of its functions, and should refuse to submit an annual report to the League of Nations. It is pointed out by the Swiss Delegate that, according to the terms of Article 24 of the Covenant, all International Bureaux already established shall be placed under the direction of the League, subject to the consent of the Parties. This need not in any way prevent us from taking a step further and declaring,—although, according to Article 24, the consent of the Parties is necessary,—that the International Office is to exchange information and to submit a report. Surely we could insert a similar clause in Article 6; the provision appears to me quite harmless, and I do not understand why objection should be raised to it.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — May I reassure M. Lankas and repeat what I have said. Article 6 does not refer specially to this Office. There is also the International Tariffs Office at Brussels, and there may be others. This article must be read as applying generally.

As regards the relations between the Central Office and the League of Nations, I can again reassure M. Lankas. We have been in touch for the last year with the Organisations of the League of Nations; in particular, we received a visit from Dr. Nitobé, Director of the Section of International Bureaux of the League of Nations. The extract from the historical notice which I read to you at the plenary meeting held on March 30th last (1) was drawn from information which we had just supplied to Dr. Nitobé, accompanied by a detailed statement as to our financial position. I may add that when I left Bern, our Headquarters Report was at that very moment leaving the press, and the Section of International Bureaux of the League of Nations has by this time received a copy of it. You will observe that these relations do indeed exist; and I desire only one thing,—that they should develop; moreover, they are relations of the most friendly kind.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As M. Etienne said, there is here a question of principle which is already settled by the terms of Article 24 of the Covenant. I do not suppose that the delegates here at Barcelona have asked for the consent of their respective Governments on the subject, or have received it. Would it not be well then to abstain from further discussion for the moment, seeing that, in my opinion, no essential question is involved. Have we not been told that there are already relations and that these will continue to grow? I cannot understand any other point of view, and I therefore propose that a vote be now taken on Article 6, the words *existing or* being omitted.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Upon what question is it proposed to vote? Simply upon the omission of the words between brackets : *existing or,* or upon the whole text of Article 6 as it appears in the *Green Book?*

The CHAIRMAN. — The present idea is to vote on the adoption or omission of the words *existing or* which are between brackets in the *Green Book,* because if we omit these words, there will be no need to take a vote on the Swiss amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot understand why this provision could not be applied to the Central Office at Bern, which is an institution of the various governments. I will not speak of the Tariffs Office at Brussels, which is a railway institution bearing quite a different character. It is for this reason that I asked for an explanation; I do not wish to make a proposal, but in view of the present situation, I even wonder whether if we omitted the words *existing or,* Article 6 would have any meaning whatever. I am inclined to propose that it be omitted altogether. As, however, it is desirable that this question, which is of some importance, should receive more careful study, I would suggest that it should be dealt with by a sub-committee; I am sure that a solution would be arrived at rapidly.

M. SINIGALIA (Italy; speaking in French). — I support your proposal.

Mr. G. L. COLVIN (Great Britain). — I also support the view of the Czecho-Slovak Delegate. The question is of great importance, particularly for the working of the body which we hope to see set up, and it is most necessary that the latter should be supplied with all the information possible. The matter might be referred to a sub-committee.

M. WIELOWIEYSKI (Poland; speaking in French). — By the terms of Article 6, an obligation is created for organisations over which we have no rights whatever. Article 24 of the Covenant is invoked, but, in my opinion, this article does not accord us the right. What does it do? It says : *if the parties to such treaties consent...* This condition has not yet been fulfilled, since the parties have not yet given their consent. We cannot, therefore, invoke the article, and accordingly Article 6 should either be omitted or should be given the form of a recommendation; it should not be binding

(1) See p. 5.

as in its present form. In the French text, instead of saying *en vertu de* we might say *conformément à*, thus making the same reservation as Article 24.

M. CARLIN (Switzerland; speaking in French). — I regret that the Delegates who have spoken on the subject of Article 6 have not kept strictly within the limits laid down. It is not a question of discussing the Swiss amendment, but of deciding whether the words *existing or* between brackets in the *Green Book* Draft shall be deleted. I regret this all the more because I omitted to state the motives underlying my amendment; I intended to do this a little later. Many of the observations made, and many of the misunderstandings which have arisen might have been avoided.

Assuming that the Swiss amendment is not under discussion, it appears to me that if it is to be referred to a sub-committee, it would be desirable to put to the vote, in the first place the proposal which I made and which took the place of our amendment,— namely, the omission of the words *existing or*, and in the second place the omission of the article. In view of the terms of Article 24 of the Covenant, surely Article 6 would appear superfluous. It arises clearly from the terms in which Article 24 of the Covenant is couched, that these International Bureaux will, in virtue of the consent of all the Contracting Parties, be placed under the authority of the League of Nations; this follows on from the obligation imposed on them to submit to the League of Nations reports on the exercise of their functions.

Another point has been touched upon. We are speaking of the Transport Office only, and the Transport Office being under the supervision and authority of the Federal Council, it is surely for this body to decide the attitude which these Bureaux shall take up with regard to the terms of Article 6.

To sum up, I think that a vote should be taken first of all upon deleting the words *existing or*, and then upon omitting the article. I ask that a vote should first be taken with regard to deleting the words, because the vote upon omitting the article may be influenced according to whether the words in question are retained or omitted. I defer to the Chairman's view on this point.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation endorses the very timely observations made by the Polish Delegate. It further accords its full support to the suggestion of the British Delegate.

The CHAIRMAN. — If the question is to be referred to a sub-committee, this must be done before the vote is taken. Would it not be well for the Swiss Delegate to make a statement to us with regard to the reasons which prompted his amendment? The Sub-Committee will then be able to consider the three alternatives,—the adoption of the Swiss amendment, the deletion of the words *existing or*, and the complete omission of the article.

M. CARLIN (Switzerland; speaking in French). — We may either decide to delete the words in question, or to drop what appears to me an unnecessary article; in either case it will be superfluous to call in the aid of a sub-committee. I feel impelled to suggest to the Chairman that a vote upon deleting the words *existing or* should be followed by a vote upon omitting the article. Upon this vote will depend the question of referring the matter to a sub-committee.

The CHAIRMAN. — There may be delegates who are in the same position as the Chairman; I should like to receive a little more information about the matter before initiating a vote on the question of omitting certain words, and even a whole article, drafted by the *Green Book* Committee.

M. CARLIN (Switzerland; speaking in French). — Since it is desired that I should state the reasons which prompted me to submit my amendment, I am only too happy to concur in your request. In the first place, in order to clear away all possible misunderstanding, I should like to emphasise the fact that it was on behalf of the Swiss Federal Council in its capacity as supervising body of the Bern International Bureaux that the Swiss Delegation presented to the Conference the amendment to Article 6,

the text of which is now before you. I am not here speaking in the name of the Swiss Government as such, I am speaking in the name of the Federal Council in its capacity as the authority which supervises and controls the International Bureaux at Bern.

As I have stated, it is stipulated by the terms of Article 24 of the Covenant that all international bureaux established by general treaties shall be placed under the direction of the League of Nations, if the parties to such treaties consent. The phrase *if the parties to such treaties consent* leaves something to be desired, and it is for this reason that we desired more exact information on the point. Are we to understand from the words *if the parties to such treaties consent*, all the parties, all the States belonging to the various associations for whose benefit these bureaux were created? If this is so, very well. But it might be inferred—we must beware of different interpretations which are sometimes unexpected—that the consent of the parties referred only to the parties concerned,—in other words to those parties which are Members of the League of Nations.

It is, then, upon Article 24 of the Covenant that the provisions of Article 6 of the Draft Convention depend. But this article only mentions the fact that the International Offices will exchange with the Advisory and Technical Committee all useful information with regard to the exercise of their functions, and will submit an annual report to the League of Nations. It does not repeat the reservation as to the consent of the parties which is included under Article 24 of the Covenant.

The Swiss Delegation considers that in order to secure more precision and to safeguard the responsibilities of the Swiss Government in respect of the International Bureaux at Bern, this reservation should be expressly mentioned in Article 6 of the Convention. It is for this reason that we proposed the addition of the words : *in so far as all the States adhering to the Convention by which they have been set up agree thereto.* In this way any misunderstanding is averted, and we have a complete parallel between Article 6 of the Convention and Article 24 of the Covenant. Firstly, the Bureaux will be under the direction of the League of Nations,—since they will be under an obligation to submit annual reports; and, secondly, it will be indicated in the same article—for the reasons which I have outlined,—this point may be of considerable importance—that this can only be done with the consent of all the States which are members of the various associations for whose benefit the Bureaux were set up.

We are not making any innovation,—we are simply asking that the reservation expressed in Article 24 of the Covenant may be mentioned in Article 6 of the Convention. I prefer to say this in so many words rather than to support the Polish Delegate's proposal, the object of which is in reality the same. In asking for the substitution in the French text of the words *conformément à l'article 24 du Pacte* for the words *en vertu de l'article 24 du Pacte*, it is intended to infer that the reservation contained in Article 24 of the Covenant is included under the terms of Article 6; but I should prefer this to be said in so many words.

These are the motives which prompted us to submit our amendment. I did not expect to have to state them here, at least for the present; I had understood that there were two proposals before us,—either to delete the words *existing or*, or else to drop Article 6, and in order to save time I had intended to postpone until later the statement which I have made to the Committee. In any event, the Swiss Delegation hopes that the Committee will see no objection to adopting the proposed amendment, which is nothing more than the logical and legal outcome of the interpretation which should be given to Article 24 of the Covenant.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I believe we all agree that it is undesirable to lay down provisions in our Convention with regard to the obligations which will devolve upon existing or future International Bureaux in respect of their relations with the League of Nations. But we must also respect the clause in the Covenant concerning the manner of placing existing International Bureaux under the direction of the League.

Could not the Committee adopt the following text :

The International Offices which are placed under the direction of the League of Nations, in conformity with Article 24 of the Covenant, as also those which will be set up in the future

by special Conventions, shall exchange directly with the Advisory and Technical Committee for Communications and Transit any information relating to their functions, and shall submit an annual report to the League of Nations.

M. POLITIS (Greece; speaking in French). — As one of those who helped to draft the *Green Book,* and basing my remarks on Article 6, I will venture to supply an explanation. It was never the intention of the Commission which drafted the *Green Book* to place existing or future international offices under the direction of the League of Nations. Besides, Article 6 does not state that these Offices are placed under the direction of the League of Nations; it simply states very naturally that these Offices will be in touch with the Advisory and Technical Committee,—and hence with the League of Nations—submitting information and an annual report. The Offices are left with all the authority which they possess at present, and which is granted them by the States signatories of the Conventions with which these Offices have to deal. The words in the article *in conformity with Article 24 of the Covenant* were simply intended to convey the fact that the terms of Article 6 were based upon those of Article 24 of the Covenant. In the hope that satisfaction may be given to the Committee, I propose simply to change the words *in conformity with Article 24,* and say *the creation of International Transport Bureaux;* this will to show more clearly that the only Bureaux concerned are those which deal with railway transport. Other existing Bureaux could hardly be touched by the remaining provisions of the article. Finally, Article 24 has nothing to do with this text, and all mention of it may be omitted.

The CHAIRMAN. — It is obvious that we cannot end this discussion to-day. I suggest that we could resume our labours to-morrow, having before us the conclusion arrived at by a sub-committee, to which I propose that there be appointed the representatives of Brazil, Czecho-Slovakia, Esthonia, Germany, Greece, Italy, Japan, Poland, Switzerland and Uruguay.

M. CARLIN (Switzerland; speaking in French). — I should not like the Committee to carry away the impression of the observations made by the Greek Delegate, and, therefore, before the meeting breaks up, I should like to say that if all reference to Article 24 of the Covenant is omitted in this Article 6, then the latter ceases to afford any guarantee whatever. The only guarantee possessed by the Federal Council in its capacity as supervising body is vested in Article 24; if all reference to Article 24 is omitted we are face to face with an impossible state of affairs.

The meeting adjourned at 1 p.m.

FOURTH MEETING OF THE COMMITTEE ON RAILWAYS

(Tuesday, April 5th, 1921, at 10 a.m.)

DISCUSSION OF PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE — DISCUSSION OF ARTICLE 6 (contd.) — NEW ARTICLE PROPOSED BY ITALIAN DELEGATION — DISCUSSION OF PREAMBLE — DISCUSSION OF ARTICLE 6 (contd.).

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

DISCUSSION OF PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE

The CHAIRMAN. — The first item on the agenda is the discussion of the *vœu* which has been drawn up and upon which a statement has been made on behalf of the International Labour Office by M. William Martin. I will read it :

The Conference on Communications and Transit,

Recognising that it is highly desirable to make the lives of the blind as normal as possible, and to assist in providing them with means for contributing to the general productiveness and for gaining their livelihood by their labour,

Recognising that the difficulties which sometimes prevent the blind from travelling by rail, and particularly the fact that they must always be accompanied when travelling, are an obstacle to the attainment of this object,

Recommends :

(*a*) That the national administration of bodies of public means of transport in each country should give special consideration to the position of blind workers travelling in the exercise of their vocation.

(*b*) That they should, in particular, consider the possibility of authorising blind workers, travelling in the exercise of their vocation, to be accompanied by a guide without having to pay two fares, since this increases the pecuniary disadvantage under which the blind labour, as compared with other workers.

(*c*) That they should agree to give international recognition to some form of legal certificate, which should be accepted as evidence of the status of blind worker, with a view to the concession of any facilities which it may be possible to grant.

M. von der LEYEN (Germany; speaking in French). — In Germany there exist facilities for transport for the benefit of the blind, and also for persons accompanying them, and even for dogs serving as their guides. I cannot say exactly what these provisions are, as I have not had time to acquaint myself with them, but I entirely agree with the Roumanian Delegate that it is not within our competence to adopt a resolution on this subject. However, as the question is a most important one, I think that the assembly might recommend this *vœu;* its social aim is clear and it emanates from an important organisation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — While recognising the philanthropic character of the *vœu* presented by the International Labour Office, I cannot but support the view expressed by the Delegates of Roumania and Germany. To speak candidly, I do not think that it is within our competence to provide a solution for this question. I therefore venture to suggest that this *vœu* should be simply referred to the Advisory Committee without comment.

M. WIELOWIEYSKI (Poland; speaking in French). — I support the proposal of the Brazilian Delegation to refer the question without comment, as it is quite outside our competence.

M. LOISEAU (France; speaking in French). — In order to avoid making this seem too bald, and on account of the importance of the proposal, could we not recommend it to the favourable consideration of the Advisory Committee?

M. POLITIS (Greece; speaking in French). — I also am of the opinion that this question is outside the domain of our work. Measures have been taken by the different States on behalf of the blind as of all victims of the war, and it would be somewhat offensive for us to point out to them their duty in this respect.

M. LANKAS (Czecho-Slovakia; speaking in French). — I fully support the proposal of the Brazilian Delegate, but I am not certain whether it would not be desirable to point out, as the Greek Delegate has said, that in every country there exist special considerably reduced rates in favour of the blind, and that it is universally recognised that these unfortunate victims of the war should be helped everywhere.

The CHAIRMAN. — As the Committee appears to be unanimous on this question I propose that a sub-committee, composed of the Delegates of Brazil, Czecho-Slovakia and Greece, should meet to find a formula.

M. POLITIS (Greece; speaking in French). — There is no formula to find; the question is outside our programme.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — My proposal is to refer the question to the Advisory Committee, which will consider what subsequent steps should be taken.

M. POLITIS (Greece; speaking in French). — I think that no subsequent steps should be taken.

The CHAIRMAN. — I put the Brazilian proposal to the vote, and I propose that the terms in which the question is referred should be drawn up by the Delegates of Brazil, Czecho-Slovakia and France.

The proposal was adopted by 17 votes to 2.

DISCUSSION OF ARTICLE 6 (contd.)

We now return to the discussion of Article 6 of the Draft Convention, which was referred to a sub-committee. The Delegate of Greece. M. Politis, was asked to propose a draft text.

M. POLITIS (Greece; speaking in French). — In reply to the Chairman, I have the honour to inform him and also the Committee that we deliberated for two hours yesterday without arriving at a definite result. The last proposal which we submitted to the Sub-Committee, and which was not accepted unanimously, read as follows :

Subject to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable, in cases in which existing or future Conventions referred to in Article 5 involve the creation of International Bureaux, these bureaux shall exchange directly with the permanent Communications and Transit Committee any useful information relating to the exercise of their functions and submit an annual report to the League of Nations.

As you see, we finally expressed the terms of Article 6 as contained in the *Green Book*, in the form of a *vœu*. I think we cannot go further, and that we have made every possible concession.

If only in deference to the League of Nations, international transport offices must enter into relations with the Advisory and Technical Committee. An application for certain information might in the future be made to this Advisory and Technical Committee; it would not of course be possible to refer the applicant to the Central Office at Bern. The Committee should be in a position to supply the information.

M. LANKAS (Czecho-Slovakia; speaking in French). — I think that there should not merely be a connecting link between the central offices and the League of Nations. We consider that the *vœu* did not in any way refer to Article 24; we thought that our formula would not encroach at all on the domain of this article, and that it should not touch upon the question of the authority to be exercised by the League of Nations over central offices. I should like to say that the Delegate of Uruguay declared that this formula was unacceptable; he is not now present.

M. POLITIS (Greece; speaking in French). — Why unacceptable?

M. LANKAS (Czecho-Slovakia; speaking in French). — Because the Delegate of Uruguay said that he could accept the formula only in an obligatory form. As there is here a very important and fundamental difference, I am wondering whether we could take a definite decision in his absence.

M. CARLIN (Switzerland; speaking in French). — As regards the amendment to Article 6 which gave rise to a discussion in Sub-Committee, I am happy to be able to say that the Swiss Delegation is in a position to support the proposed text. As regards the remark of the Czecho-Slovak Delegate to the effect that at the meeting of the Sub-Committee held yesterday afternoon the Delegate of Uruguay opposed it, I really think that as he was not present at our meeting this morning, and is not present now, we may proceed and take a vote on the proposal which has been made. If we had to wait for each Delegate concerned in the question to be present, I think we should never come to an end.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I very greatly regret that I do not at all agree with the Swiss Delegate, and I ask the Committee to wait until the end of our meeting before voting on this article. Perhaps by that time the Delegate of Uruguay will have arrived. I am convinced that he was unavoidably prevented from coming to the Sub-Committee this morning and from being here in time for this meeting. I think it would be a graceful act towards him to postpone the voting for a short time.

The CHAIRMAN. — I think that perhaps as the Uruguayan Delegation is not very numerous, we might, as a matter of courtesy, wait until the Delegate is present. I propose therefore to adjourn the discussion until he arrives.

NEW ARTICLE PROPOSED BY THE ITALIAN DELEGATION

We have now to consider a new Article, 6 *a*), proposed by the Italian Delegation, which corresponds to that included in the Transit Convention. I will read it :—

Scope of application of the Convention.

Exceptions may be made in special cases to the terms of the preceding articles, in virtue of special or general measures which one of the High Contracting Parties may be obliged to take in the case of emergency affecting the vital interests of the country, it being understood that the principle of freedom of communications shall be observed as far as possible.

M. SINIGALIA (Italy; speaking in French). — The sole aim of the proposal of the Italian Delegation to insert an Article 6 *a*) in this Convention is to fill a gap which it considers exists in the Convention. Article 6 *a*) is simply a repetition of an article of

the Transit Convention; it refers to measures of security which every State would be obliged to take in the case of emergency affecting the safety of the State and the vital interests of the country. This is therefore not a new question; it is simply a matter of drafting and of uniformity with the other similar conventions.

The CHAIRMAN. — Are there any objections to the Italian proposal? If not, I propose to refer the article to the Drafting Committee.

DISCUSSION OF PREAMBLE

We have now finished the discussion of those technical articles which are to be found only in this Convention; as the other articles are of a formal nature and are similar to those in the other Conventions, I propose to return to the Preamble.

M. LANKAS (Czecho-Slovakia; speaking in French). — We withdraw the Czecho-Slovak amendment to the Preamble (1).

M. LOISEAU (France; speaking in French). — On Friday last, during the discussion of Article 1 and on the occasion of an amendment submitted by the Italian Delegation, the Brazilian Delegate put forward the suggestion to convert the Draft which we are now discussing into a uniform series of recommendations instead of preserving the mixed form, part recommendations and part Convention, adopted in the *Green Book*. I think that consideration of the Preamble also includes an examination of this question. The advantage of the proposed alteration would be in the first place to give the document which will crown our labours a clearer and more consistent form.

When I analyse the text of the *Green Book* I find that, apart from the Preamble, it contains :—

1. A list of recommendations, Articles 1, 2 and 3;

2. The formula amended by the Czecho-Slovak Delegation, which constitutes a Convention. This is the new Article 5.

3. Article 6, entitled *Relations between the Advisory Committee and the International Bureaux*. It is on this article that we must take a decision at the end of the meeting. I would beg you to note that some of our colleagues have already asked that this Article 6 should become simply a *vœu*. I am prepared to support this proposal, and I am convinced that the Delegate of Switzerland would not demur to it.

4. Finally, the articles numbered 7 to 22, which have already been incorporated in other Conventions, and which are for the most part of a formal nature.

Such is the economy of the *Green Book* Draft. It is open at the outset to one fundamental criticism, namely that it amalgamates in one and the same document—in a document which forms a single whole—and under the same heading, principles which are proposed and principles which are imposed, the principles which are proposed, in Articles 1, 2 and 3, and the principles which are imposed, in the former Article 4, now Article 5. It therefore amalgamates advisory and imperative formulas, recommendations and schemes which are to be binding. This is a defect to which I think it is needless for me to call your attention further.

I pass from formal to fundamental criticism, and I ask myself why there should be this difference between the economy of the first articles and that of Article 4. Is this justified by the difference in the contents? When subjects of primary importance are dealt with, such as passenger and goods traffic, or exchange of rolling-stock, it is merely stated that it is highly desirable that provision should be made. It was realised

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(1) The text of the Czecho-Slovak amendment to the Preamble reads as follows :—
"Omit this article and substitute for it the following :—

'Principles of the Convention.

"'The participating States, being desirous of applying to the railways placed under their sovereignty or authority the principle of freedom of communications, in accordance with Article 23 *e*) of the Covenant, concert, with a view to facilitating and developing international traffic, to the following provisions.'"

that the practical application belongs to the competence of States and railway administrations, with the mutual use of contractual freedom. It was rightly considered that if the Barcelona Conference had tried to bring railway matters into general legislation, it would have laid the League of Nations open to the reproach of attempting to embrace more than it could compass.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — Hear, hear!

M. LOISEAU (France; speaking in French). — Why then should we show ourselves bolder or less circumspect in the matter of equality of treatment,—a secondary one after all, at least in comparison with the first? You will note that I do not discuss the principle of Article 4. I also am an advocate of equality of treatment, and I gave proof of it yesterday by putting to M. Étienne a question with regard to individual agreements. There is nothing new in the subject of equality of treatment; it has already become a part of customary practice. It has been the subject of conventions, and it is in conformity with the interests of every State. As a rule there is no necessity to compel States to observe it. These are antecedents which ought to reassure the advocates of equality of treatment. It is, if you like, a principle to be consolidated, but not a new principle to be created. A recommendation appears to me to be as effective as an engagement properly so-called, because an administration which felt the temptation to evade the rule of equality of treatment would be restrained as much by the implicit disapproval which would result from the failure to observe a solemn recommendation like those contained in Articles 1, 2 and 3, as by the prospect of having to defend a lawsuit, to say nothing of the fear of reprisals.

I will return to the question of special agreements, which is the keystone of the system. I showed yesterday, and M. Étienne agreed with me, that, when it is a question of special agreements, that is to say, when a rule has been broken, you are content with a prohibition without sanction or with an inadequate sanction. Why not remain content with a recommendation for the rule itself? So long as you have not provided a more effective penalty for the infringement of the rule, you will not protect it, you will not have passed legislation. What you will have done reminds me, if I may say so, of M. Jourdain, who wrote prose without knowing it; you will simply have been recommending without trying to do so.

I will now pass to the direct advantages of a generalised system of recommendations. In the first place it enables a homogeneity to be given to the idea and form of the document which will result from our labours. We shall avoid having recourse to a mixed formula, of which I know but few examples, and which I think will not have many imitators. Finally, we should thus avoid wounding sensibilities and giving rise to dissensions, and perhaps to opposition, which are liable at any time to be aroused by a scheme for a general and reciprocal engagement, when it is submitted for signature to the Governments, and above all for the approval of Parliaments. Even within these walls you have had a foretaste of these dissensions and this opposition,—of the circumspection, to say nothing more, with which the Committee has received the mere statement, in the text of the Italian amendment, of the terms *undertake to adopt*. But in my opinion we ought to cast our eyes beyond these walls. We all know that unless Governments approve and unless Parliaments ratify, our ephemeral legislative work will be honourable but vain. Are you indeed sure that the idea of general international conventions, even, as here, in the form of partial conventions, has gone beyond the stage encountering obstacles? I venture to doubt it. On the other hand if the Conference confines itself to the system of recommendations, you will avoid offending anyone, and you will have every likelihood of not appealing in vain to the goodwill of all.

There is a term which is used and which is sometimes abused, and which for my part I have not once heard since the beginning of the Barcelona Conference; that term is *public opinion*. This proves, by the way, that we do not merely court popularity. As I am not courting anyone else either, I shall not go so far as to say that public opinion is following the work of the Conference with impassioned interest. However, it *is* interested in it. Why? Because it expects practical results; it desires to emerge from this distressing condition, I was about to say this state of chaos, which has resulted

from the war and which is putting the patience of travellers, consignors and the public in general to a protracted trial.

Where has public opinion hitherto found any practical results, and whence does it expect them? It expects them—in particular as regards immediate or impending results—from the conclusion of *inter se* agreements by Governments and railway administrations. Before the war there were manifold examples of these agreements. The Convention of Bern was not the only one; it devised and prepared a better formula for international circulation. Since the war we have had examples of this. In this connection I am thinking of the agreement which resulted in the institution of the Simplon-Orient Express, which does honour not only to the French Paris-Lyons-Mediterranean Company and the Sleeping Car Company, but to a large number of administrative bodies which are concerned in the agreement. How can I help thinking of this when I meet in this hall most of my colleagues on the Organising Committee of the Simplon-Orient Express—M. Hanrez, Delegate of Belgium; M. Caracostea, Delegate of Roumania; M. Politis, Delegate of Greece; M. Sinigalia, Delegate of Italy; and my friend M. Avramovitch, Delegate of the Serb-Croat-Slovene State? Let us leave as much free play as possible to this initiative on the part of professional men and men of goodwill. Do not let us attempt to impose too rigid a text upon them. Let us, like public opinion, have confidence in them, and let us remind ourselves also that what public opinion expects of us is in the first place some prelude to an international code,—but a code which calls for the utmost caution, as has been done in Articles 1, 2 and 3. Public opinion also expects from us general guidance and instructions, and, I will add, official public and solemn encouragement of the efforts which have been made up to the present, and which are still being made, to restore traffic to its normal course, and thereby to reassure the various world interests concerned.

I will now draw to a close. I do not wish at present to give to my remarks the precise form of an amendment; I think it would be premature to do so until you have, so to speak, taken up a definite attitude, as regards the suggestion which was made in the first place—and I congratulate him upon doing so—by the Delegate of Brazil. I will therefore confine myself to asking the Committee to take a decision of principle on the following question:—Instead of leaving the provisions contained in Annex 4 of the *Green Book* in the form and with the title of a Draft Convention, would it not be better to convert this Draft into a series of texts involving recommendations only, in so far as the composition of these texts, as discussed by the Committee, is left untouched.

M. LANKAS (Czecho-Slovakia; speaking in French). — I greatly regret that I cannot support the case so brilliantly presented by the Delegate of France. I also regret that the French Delegate is here adopting an attitude so different from that adopted by the other French Delegates on the Commission of Enquiry at Paris. No doubt if all the Conventions which we draw up here contain nothing but recommendations and *vœux* they will certainly be approved by Parliaments and ratified by Governments; but I should like to know if the only object of the Barcelona Conference, which is involving our Governments in vast expense, is to enable us to come to an agreement upon texts which have no other value than that of recommendations or *vœux*. It would be most regrettable if we gave our Convention the form of a mere recommendation. Moreover, the Delegate of the International Labour Bureau pointed out to me that the word *recommendation* is taken from the chapter in the Treaties of Peace which regulates the working of the Labour Office, and that in that connection this word *recommendation* has a totally different meaning and a totally different scope from those which we are giving it in the present Convention. It is almost binding as a Convention itself, whereas in the sense in which we use it, not only does it lack this scope, but, to speak plainly, if has no definite meaning at all. In my opinion, in a field as far-reaching, practical and important as that of railways, we should reach an agreement on at least a minimum of obligations. Allow me to point out that you have yourselves settled the question; you rejected the Belgian amendment, the object of which was to lessen the scope of Article 4, concerning tariffs. You adopted the obligatory formula. Why abandon this formula for that of a recommendation? The Railways Convention must contain a nucleus of obligations which will regulate this important matter in the future.

The Delegate of France cited Article 4 in the *Green Book*, and pointed out that it did not contain any sanctions. I would point out to him in my turn that this text is taken from the Bern Convention, and that in the fifty years during which it has been applied, it has never given rise either to disputes or to difficulties. I did not say this at the preceding meeting, in order to avoid lengthening the debate, but in my view, the sanction is clear. As regards the sphere of the Bern Convention, any reduction in tariff rates is expressly prohibited, and any reduction granted by special treaties is *ipso facto* null and void. This formula is sufficient to give anyone the right to appeal to the courts of any country, and these courts would have to find that a reduction of this kind, being contrary to the Bern Convention, which has the force of law, is null and void, and would have to give an award in favour of the plaintiff.

The sanction therefore is quite clear. It would be most advantageous to insert this formula in a world-convention on railways. If the formula appears in our Convention, even those States which are not parties to the Bern Convention will have the right to bring before the courts any special agreement granting special advantages. I will not combat the arguments presented by the French Delegate in support of his case; I will only venture to ask you not to make this change in the scope of our Convention, and to retain the obligatory formula for Article 4 and Article 5.

M. WIELOWIEYSKI (Poland; speaking in French). — I think that the essential point for us is to come to a decision. Public opinion, particularly Spanish public opinion, if I may believe this morning's press, is greatly interested in our labours. I fully understand the point of view of the Delegate of Czecho-Slovakia, who, adopting the same view as myself, would like to obtain complete results in respect of railways; but my wish is above all to obtain some result. I shall therefore give my support to the French motion, because I prefer something which is not perfect, but which will secure the signatures of all, to something which has every appearance of perfection, but which is in danger of not being signed. I have spoken of public opinion, and I think that nothing could be worse than to adopt here, in general, agreements which no-one would ratify, or which would only be ratified by a minority of countries. In the interests of the authority of the League of Nations, too,—an authority which would be weakened if a Conference held under its auspices did not achieve any result—I will ask you, speaking from a practical standpoint, to vote for the motion submitted by France, in agreement, I think, with Brazil. If we prepare something practical, something concrete, and recommend it, all will accept it, but if, on the other hand, we prepare something which is neither practical nor concrete, and attempt to impose it, our provisions might remain a dead letter. I prefer something imperfect but perfectly alive to something perfect but imperfectly alive.

M. SINIGALIA (Italy; speaking in French). — I greatly regret to see that a discussion is beginning again now which was debated at length when this Draft Convention on Railways was drawn up. Almost the same question arose then, and everyone expressed the opinion that it was impossible only to make recommendations in a Convention such as this, which may be said to be perfectly innocuous. Consequently, I support with all my heart what the representative of Czecho-Slovakia has said. I consider that it was quite useless to summon all of us here simply to express recommendations, which we could have done just as well without moving at all. The Delegate of France cites in support of his case the precedents of the Bern Convention and the institution of the Simplon-Orient Express. I reply that the Bern Convention, as well as the Simplon-Orient Express Convention, were the subjects of Conventions between Governments and not between railway administrations. In accordance with the terms of these intergovernmental conventions and within the sphere of their competence, the railway companies take the necessary measures to apply the principles laid down by the Governments, but the principles perpetuated in these conventions should not originate in the will of the railway administrations. The Governments alone control the guiding principles of railway policy, and the railway administrations, whether State or not, cannot ignore the Governments. In those countries in which railway administrations are in private hands, the interests of these administrations may not happen to concord with the general interests of the State, and in countries in which the railways are operated

directly by the State, the State as an administrator cannot be dissociated from the State as a Government in any agreements which are made.

I will add that Article 23 *e*) of the Covenant states that Members of the League *will make provision to secure and maintain...*, but if we simply make recommendations, I do not see how Members of the League will be able to make these necessary measures. In order to do so there must be engagements undertaken between the Contracting Parties. If we limit ourselves to recommendations, I think that we shall not fulfil the obligation which derives from Article 23 *e*) of the Covenant. I repeat therefore that I strongly support the proposal of the Czecho-Slovak Delegation, which appears to me wholly logical, and which I think fulfils the intentions of the authors of Article 23 *e*) of the Covenant.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I have listened with interest to the arguments of the Czecho-Slovak and Italian Delegates. I am sorry to say that they have not convinced me; I adhere to the view that I expressed during the discussion of Article 1. We proposed to change the Convention to a recommendation and not to a mere *vœu*, because the term *recommendation* is stronger than the term *vœu*. When I turn to Article 405 of the Treaty of Versailles, the terms of which are most precise and clear, I find that :

> ... Each of the Members of the Labour Conference undertakes that it will, within a period of one year at most from the closing of the session of the Conference... bring the recommendation or Draft Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

This appears to me also in complete conformity with Article 23 of the Covenant, which enacts that Members shall make provision with a view to facilitating transport traffic.

The recommendation which we should make to the Governments would enable them to pass Conventions *inter se*, and it would be these Conventions which would constitute these very provisions which the Governments are to make in virtue of Article 23 of the Covenant. We all agreed that it was impossible to make a convention or contract of world-wide scope in respect of railways. Why? Because although this contract is applicable to Europe, it cannot be applied to the other continents, and if it cannot be applied to the other continents, then it cannot be world-wide. Let us therefore make a recommendation, let us give guiding principles to every Government, let us weld a framework applicable to Europe, Asia, Africa and America; but let Europe tomorrow, if she wishes to do so, make a Convention in the strict sense of the word,— a binding contract. Let America develop in proportion to the progress of her railways, and when she has reached a stage of railway development equal to that of Europe, in a few years, in a few generations perhaps, let us make a world-convention applicable everywhere and acceptable everywhere.

I should like to make my views quite clear on the point that, if this Convention is anything but a recommendation, if it does anything more than give guiding principles to the different Contracting Parties with a view to the subsequent agreements which they will conclude *inter se*, then a Convention cannot be accepted by the countries of South America; in this matter I think I am interpreting what will also be the view of the Delegate of Chile. If we make a Convention in these conditions, I cannot see why all of us should not agree to change it to recommendations. Then, if we are all in agreement on this point, let us be logical and agree as to the form; and, as the Delegate of Poland said, we shall achieve a definite result much more quickly, because no-one will feel any misgivings. These are the only remarks which I wished to put before the Committee. But I should like to state categorically that Brazil is not opposed in principle to a text drawn up in the form of a recommendation. What I cannot accept is the inconsistency that exists between the title of the instrument before us and the substance of the actual text of that instrument.

The CHAIRMAN. — May I ask the indulgence of the Committee to intervene in the discussion? I am sure the Committee will acquit me of any desire to tie up the countries too tightly. I think what I have said has made clear my view on that point.

As a former railway man, I have all a railway man's dislike to obligations, and all a railway man's willingness to enter into understandings; but I should like the Committee to consider what it is proposing to do here. You have already altered mandatory instructions into recommendations. I admit there is very little mandatory left. But supposing you completely alter this Convention into a series of recommendations; I would then ask you to consider what the effect will be on public opinion. Would it not be said that the railways alone—those railways which have always been able to enter into agreements much more binding than this—have failed to come to anything but a series of recommendations? I beg the Committee, before it takes such a drastic step as this, to consider the effect it will have upon public opinion.

Mr. COLVIN (Great Britain). — I will explain very briefly my views on this proposal. It has been sprung upon me without any warning, and I may not be alone in wishing that it had been possible to give us a longer time in which to consider all the bearings of this particular proposal. At the same time I have no hesitation in saying that I oppose the proposal. The Railways Convention can perhaps be criticised on the grounds that it does not contain very much, and I am certainly strongly against weakening whatever force it may have by changing its form to that of a Recommendation. Article 4 at least does contain a definite and clear-cut principle which may serve as a guide to the League of Nations in judging disputes and in helping to shape the international policy of railways. Do not let us weaken this principle by degrading this document from the dignity of a Convention to the humbler status of a Recommendation. Reference has been made to public opinion. I believe public opinion does expect something definite on the subject of railways from the Barcelona Conference, and I do not think public opinion will consider that it has received anything of much value if it learns that the best we can do is to pass a simple Recommendation. I believe the public think that the time for pious opinions has passed and that the time for action has arrived.

M. LANKAS (Czecho-Slovakia; speaking in French). — I should like to thank the Italian and British Delegates for having supported my case, and I should also like to express my great astonishment at the fact—a totally new one to me—which I have learned from the lips of the Polish Delegate, namely that we might possibly fail to secure the support of the majority of the States for the Draft Conventions. I should like to point out that the *Green Book* has been in the hands of the Governments for several months—about six months, I think—that they have all studied it and had it examined by Committees and by Chambers of Commerce; in France itself a special Committee was appointed for this purpose. We have not strengthened the binding force of this Draft; we have even weakened it still more, and I cannot understand why the delegations which are so sure that their Governments would not ratify it did not impart their opinion at the outset, as I myself had no hesitation in stating at the very first meeting that my Government had instructed me to accept the *Green Book*. Moreover the Brazilian Delegate declares that he would accept the form of a recommendation as laid down in Article 405 of the Treaty of Versailles. I should like to say that if we give our recommendation exactly the same form as the recommendations concerning the organisation of labour, I will accept it, because it is the same. But I should like to point out that we shall have to do everything over again, because we must take up another point of view. We shall have to prepare a thing which is completely new. I very greatly regret to have to remind the Delegate of France that Article 379 of the Treaty of Versailles speaks of General Conventions on the International Regime of Transit, Navigable Waterways, Ports and Railways. I do not hesitate to say, now that I am forced to do so, that I have no doubt that the Convention drawn up here will probably supersede certain clauses of the Treaty of Peace. The distinguished jurists who are taking part in our Conference will have to consider the question whether the Convention that we are preparing, which will be called a Recommendation, is indeed that which is laid down in Article 379.

The Convention is weakened still more by Article 5, which leaves full freedom to all the Governments of the world and allows them to manage their affairs in their own way. I do not know whether there is anything in our Convention which the States

of America cannot accept. Can they be afraid that it will not be ratified by their Governments? I think—and I am expressing a personal opinion—that it contains nothing which can prove unacceptable to non-European countries. I place strong reliance on the proposals made by the Delegates of Italy and the British Empire, and I urgently beg the Committee not to change the form of our Convention, or to abandon what in German is so aptly called the *Schönheitsfehler,* and to accept it in the form proposed in the *Green Book.*

M. SINIGALIA (Italy; speaking in French). — I should like to emphasise one of the arguments put before you by the Delegate of Czecho-Slovakia, in reply to the misgivings expressed by the Delegate of Brazil. It is feared that this Convention cannot be applied to the whole world in every respect. If I remember aright, this question was considered on several occasions, and even settled, at the time of the discussion of the various articles; reservations were made which give entire satisfaction to all, and which are calculated to allay the fears of the Brazilian Delegate. As I am speaking, I will venture to draw the attention of the Committee to the great importance of the proposal which has been made, particularly as was very truly stated with regard to public opinion. As we have so little time to consider this question thoroughly, I think it would be well to postpone the decision, in order that all of us may realise the consequences which may be involved and the effect on the other Draft Conventions, because we may be asked to extend this system to all the Conventions. I therefore propose that the discussion be postponed.

M. HSU (China). — I have listened with very great interest to this debate. It appears that some of the delegates would prefer to make this Convention into Recommendations, but according to the Convention we must make a Convention, not Recommendations. When we examine the Draft, we find that Articles 1, 2 and 3 are merely recommendations, while Articles 4 and 5 impose strict obligations; our Draft is thus already partly recommendation and partly convention. This should make it acceptable to all nations. It does not matter if we call the whole a Convention, because in Articles 1, 2 and 3 we simply say *agree to recognise as highly desirable.* These articles concern the treatment of passengers and goods and the interchange of rolling-stock. Article 4 deals with tariffs. In view of the fact that many railways are privately owned, if we change Articles 1, 2 and 3 into strict obligations we shall meet with failure. In Great Britain, for instance, all the railways are privately owned, and I think it would be impossible for the British Government to interfere with their operation. It is a different matter in countries where the railways are owned by the State. I therefore favour the adoption of the Draft as it stands, without changing what are new recommendations into obligations or *vice versa.* I therefore second the proposal of the Delegates of Great Britain and Czecho-Slovakia.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I have no intention of dealing with this question fundamentally. But it is a very serious one, and we should reflect very carefully before stating a final opinion.

The *Green Book* forms an excellent basis, but, like every work of man, corrections and additions must be made to it. Having made these general observations, I venture to propose that the discussion of this subject be adjourned until the next meeting, in order that all the delegations may consult their chief delegates. It is true that we have the power to deal with these questions in our special Committees, but I think that the question which is occupying us at the moment is of such importance that the chief delegates should be called upon to state their views. Our duty here was to make the situation clear. We have done so; many important observations have been made on all sides. We may therefore, I think, leave the matter there for today and resume this discussion tomorrow.

The CHAIRMAN. — I also propose that we should not take a vote on this question today. It has come to us somewhat suddenly, and without any warning except for the previous speech of the Brazilian Delegate. It is a matter of very great moment to alter this Convention into a Recommendation. At the same time I think it would

be undesirable to stop the discussion. Therefore, if you agree, I would propose that we continue the discussion on the understanding that we shall not take a vote until tomorrow.

M. EDWARDS (Chile; speaking in French). — The Chilian Delegation is of opinion that the proposal made by the French Delegation and the reasons given by the Polish Delegation are very just. Indeed, as the Chairman has said, although the railways have been able to undertake engagements of a more binding and more comprehensive nature, these engagements were not of a world character. Moreover, that part of the Draft which constitutes an engagement is not new; it was already laid down in Article 23 of the Covenant. However, I too must state that the Chilian Delegation can accept the name *Convention* for the articles in their present form; but as I stated at the beginning of my speech, we think that the most suitable title for them is *recommendations.*

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I will say in reply to the Chilian Delegate that we are in no way afraid of the title *Convention* which is proposed for the Drafts which we have discussed. But we consider that it is more logical, and that it is in the interests of the League of Nations, to change them to *recommendations.* In our opinion the title *recommendations* is more in conformity with the text. It is also in the interests of the League of Nations, because a Convention which only contains recommendations will inevitably be criticised. It will be said that the League of Nations presents under the form of a contract a thing which in reality is not a contract.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I stated at the beginning of the Conference that there were differences of opinion. Some delegations stated that they were not authorised to treat the Draft Convention in the *Green Book* otherwise than as a preliminary draft to be discussed in this Conference, and to be referred to another Conference which might perhaps make Conventions.

My view is quite different. We have come here with full powers from our Governments to deal with the question which forms the subject of our meeting. We are authorised to make Conventions and not mere recommendations. I regret that this question was not brought up at the outset in Conference. Long and fruitless discussions would have been avoided; I consider that to make recommendations is equivalent to doing nothing at all. This is not an academic conference. We are the representatives of nations come from afar; the States which sent us have gone to expense and have made sacrifices. They have not done so simply for the purpose of theoretical discussion. If the question had been put clearly at the outset in respect of transit, railways and navigable waterways, each of us would have consulted his Government, and we should be in a position to take a decision. My view is that we ought to conclude Conventions or to make definite recommendations, but that we should not confine ourselves to a draft to be submitted to a subsequent conference.

I repeat, we have not come to take part in academic but in technical discussions; all these questions have already been considered. Our aim should be the signing of the Convention, by which each country will renounce part of its authority. The question was put in this form as regards the international bureaux. Are we all prepared to renounce part of our authority as nations, to make the mutual sacrifices called for by the solidarity which should be the basis of our international deliberations since the signing of peace? I think that we should set aside the individual points of view which have sometimes divided us.

M. SINIGALIA (Italy; speaking in French). — The Delegate of Brazil pointed out that the Draft Convention is somewhat lacking in homogeneity. I share his view. I also consider that this Convention is not homogeneous; it is divided into two parts, one containing recommendations, the other containing engagements. It is with a desire to be logical that the Italian Delegation proposed, at the beginning of our labours, that the first articles of the Convention should be transformed into articles involving engagements, and not merely recommendations. If it has not been possible to attain this object—and I regret this as much as the Brazilian Delegate—it is to a certain extent

his fault, because he did not accept the Italian proposal. No one, however, would be happier than I if, through a desire to be logical, the first articles were made to conform to Article 4 and to the other articles which involve engagements. As I have not been able to obtain all that the Italian Delegation would have desired, I am resigned, I have accepted this mixed form which has resulted from the discussion; but I maintain my view as regards the character of the Convention which is to be the result of our efforts.

M. CARACOSTEA (Roumania; speaking in French). — I ask you to support our distinguished Chairman's proposal to postpone the solution of the question which has been raised, if not until the plenary meeting, at least until tomorrow. We are technical delegates, and I think that this question somewhat exceeds our competence. We need to consult our chief delegates.

M. LOISEAU (France; speaking in French). — I support M. Caracostea's proposal, which is also that of M. Avramovitch.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I am sorry to have to occupy the attention of the Committee for a few moments more, but I should like to tell the Delegate of Italy that if I did not support his view as regards Articles 1, 2 and 3, it was for the very reason that we cannot possibly draw up a definite contract. Brazil could never accept an invitation to which you may, if you please, give the title of *convention*, but which at bottom will remain a *recommendation*. We do not object to the adoption of the word *convention* if the text stands. We wished to point out what seemed to us illogical. I support the proposal of the Chairman, which has been seconded by the Delegates of Roumania and France.

The CHAIRMAN. — I think the delegates have expressed their views sufficiently to enable them to confer with their principal delegates; the only difficulty is that we have no specific amendment before us. Perhaps it would be sufficient to settle the principle tomorrow and the discussion could be continued now; for the moment we can consider as the amendment the deletion of the words *are agreed upon... to this end* in the last line of the Preamble and inserting *recognise as highly desirable*, and also that the word *Recommendation* should be substituted for the word *Convention*.

M. LANKAS (Czecho-Slovakia; speaking in French). — That is not a proposal on your part, Mr. Chairman; it is not a proposal, it is simply a formula which can be discussed.

M. POLITIS (Greece; speaking in French). — If it were adopted, it would involve the omission of all the following articles,—8, 9 and so on.

The CHAIRMAN. — That is a question which may be dealt with later. Obviously, if this change is decided upon, Article 7 and the following articles may be omitted.

M. WIELOWIEYSKI (Poland; speaking in French). — This is a question af a Convention. Whether this Convention has the character of a recommendation or of an obligation matters little; the point is that this is a Convention, and I do not think that the title *Convention* can be changed to that of *Recommendations*. The question is whether we should put in the text itself *The High Contracting Parties undertake...* or simply, *consider as highly desirable...*

The CHAIRMAN. — With your permission we will return to the discussion of the Preamble at our meeting tomorrow.

DISCUSSION OF ARTICLE 6 (contd.)

We will now resume the discussion of Article 6, which was reserved at the beginning of this meeting.

M. LANKAS (Czecho-Slovakia; speaking in French). — We submitted this article to the consideration of a Sub-Committee, and yesterday, with M. Sinigalia in the Chair, we discussed, and in a spirit of conciliation arrived at an agreement on a text which was in the nature of a compromise. I proposed to wait until the arrival of the Delegate of Uruguay in the hope that he would accept this text, which would thus be unanimously adopted.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I thank the Chairman and my colleagues for having been so good as to wait for me before taking a decision on the point which we discussed yesterday. As I said in Sub-Committee, to make a recommendation to an international office does not concord the idea of a Convention signed by representatives of States. I understand that a separate *vœu*, outside the Convention, is, for instance, to be sent by the Advisory and Technical Committee, but I cannot understand why a request made to any office whatever, however important and authoritative, should be included in a Convention. The article, as submitted, was only disputed by Switzerland, not in the capacity of a State, but as the supervisor of the Central Office at Bern. We endeavoured to arrive at a settlement with Switzerland in this capacity, but we did not succeed. For this reason I shall adopt a more radical standpoint and ask for a provision referring to the future organisation of the Central Office to be included in the Railways Convention, stipulating that this Office shall be placed under the authority of the League of Nations, either automatically when the Convention has been signed, or by delegation, through the Conference or the Council. I will therefore propose, in the place of that of my colleague of Czecho-Slovakia, a text which may perhaps secure the support of the majority :—

For information regarding the exercise of the functions of those International Railway Bureaux or Offices which already exist or which may be established in the future, as also for the regulation of the relations between these Bureaux or Offices and the Advisory and Technical Committee, the Council of the League of Nations shall, at the proper time, take the necessary measures, in accordance with the terms of the present Convention and other general or special conventions on the same subject.

My idea is that there is no obligation at present either on the International Office, or on Switzerland as supervisor of this Office. We wish all the countries which are to sign the Convention to place themselves under obligation to entrust the League of Nations with the control of all the offices which exist or may exist. In this way we shall not place Switzerland in a difficult position, and we shall not abandon any part of our authority. I cannot agree that we should make a recommendation, *vœu*, or request to any organisation whatever which depends upon a group of nations.

M. SINIGALIA (Italy; speaking in French). — I understand, and I might add that I share the anxiety of our colleague as regards the relations between the signatory States and the central offices, which, whatever their importance, are not, in fact, of a sovereign character; but I think this anxiety may be met by the introduction of a small amendment in the text now before us. We might say,—I do not give a text, I express an idea :—

Subject to the provisions of Article 24 of the Covenant, the High Contracting Parties recognise as highly desirable that instructions should be given to those offices in order that they may exchange directly with the Advisory Committee for Communications and Transit all information...

These instructions would, of course, be given by the signatory States. This text might perhaps allay the disquietude which is felt. The signatory States of the Conven-

tion would themselves give instructions that the offices placed under their authority should exchange with the League of Nations all useful information and annual reports. The provision would not depend upon the will of an international bureau, but would derive from the will of the States.

M. CARACOSTEA (Roumania; speaking in French). — Before taking my decision, I should like some small information from M. Étienne. According to the Bern Convention, is a unanimous vote necessary for the adoption of a Resolution so important as this, or merely a majority vote?

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — Two special cases must be distinguished,—that of our periodical conferences and that of our relations with contracting States. As regards periodical conferences, decisions are taken on a majority vote. As regards questions which relate to the contracting States as a whole, and which in the natural course are transmitted to them by the Swiss Federal Council, a unanimous vote is necessary. This contingency arises, for instance, in the case of requests for the admission of new States. These requests are addressed to the Federal Council, which forwards them to the Central Office for consideration; the Central Office makes itself acquainted with the details of the railway systems and so forth, and prepares a report which is sent to the Contracting States, together with the request of the new State. A majority vote of the contracting States is requisite for the final admittance of this State.

I take this occasion to say that at the Central Office we consider that the reservation, made in favour of the parties, mentioned in Article 24 of the Covenant, refers to the contracting States of the Bern Convention. It is a point which should be made quite clear, in order to avoid any confusion between the contracting States which are parties to the Bern Convention, and the States Members of the League of Nations.

M. CARACOSTEA (Roumania; speaking in French). — But does the question whether the international offices are to be placed under the authority of the League of Nations require a unanimous or only a majority vote?

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — The procedure would certainly be as in that for requests for admission; a unanimous vote of the contracting States will be necessary.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Yes, before the meeting of one of your conferences; but when a conference has once met, do you think it is possible to place the office under the authority of the League of Nations?

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — If it is a question of resolutions taken in conference, they are of course submitted for the approval of the contracting States, and then for ratification by the Parliaments of those States. For a decision to come into force, obviously a unanimous vote must be obtained, because the text must be signed in a Diplomatic Conference, and if a contracting State does not take part in this Conference, the provisions adopted are not valid. A unanimous vote, then, is necessary in this case also.

When once questions of this kind have been brought before a Revisional Conference, the result of the work of the Conference is drawn up in the form of a Final Procès Verbal or Final Act, which is submitted to the various Governments for their approval. These Governments then appoint plenipotentiaries to the Diplomatic Conference, which transforms this Final Act into a definite instrument. Finally, this Act must be ratified by the Parliaments of the various countries.

M. CARACOSTEA (Roumania; speaking in French). — Then any text we adopt—either that of the Sub-Committee or that proposed by our colleague of Uruguay—would be null and void, because, if a unanimous vote of the Members of the Bern Conference is necessary, this will never be obtained. There will always be some State which will

not wish to have relations with the League of Nations. The Bern Convention will always remain independent of the League of Nations, and our work will be useless.

M. CARLIN (Switzerland; speaking in French). — I wish to state that I cannot accept the text of our colleague of Uruguay. The text which we submitted to you is the result of lengthy deliberations, and, as I have already stated, I am happy to be able to say that I accept it; but I cannot accept the suggestion of M. Fernandez y Medina. I should add that he alone in the Sub-Committee raised any opposition, and that on a question of form only.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — No, it is not a question of form; it is a question of the authority of the Convention and of that of the representatives of the nations here present.

M. CARLIN (Switzerland; speaking in French). — I thought I understood that it was only a question of form, as the Italian Delegate thought that he could induce our Uruguayan colleague to accept our text if the amendment which he submitted were added. In my view, this amendment is not of very much use. We say that there are direct relations with the International Offices, while leaving blank the decision as to the manner in which these offices will act. That is something which does not concern us; it is a matter of internal working, and we merely say that it is desirable that these offices should exchange information. But we must close the discussion, and I propose that the Committee should adopt the text submitted by the Sub-Committee, with the exception of one word.

M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me to draw the attention of the Delegate of Uruguay to what was said quite rightly by the Polish Delegate at the meeting yesterday. He pointed out that the sentence in the former Article 6 which speaks simply of direct exchange, and which appears to give an order to the central offices, is incompatible with Article 24 of the Covenant, which states that as regards offices already in existence, the assent of all the parties is necessary. But in my view we are not prejudicing the authority of the contracting States when we express the recommendation that until all these questions are settled, there should be certain relations between the Central Office and the League of Nations, comparatively unimportant relations, consisting of the exchange of reports and information which, moreover, already takes place today. There is, then, merely a formula to find. What we desire is a connecting-link of an entirely harmless kind between the Central Office and the League of Nations.

M. WIELOWIEYSKI (Poland; speaking in French). — I should like to put a question which on the surface appears somewhat naive; does not the fact that we are signing a Convention on Railways here create an obligation on all the signatory Members of the Bern Convention? I should like to know what will be the practical result of the relations which we have in mind, and, above all, the obligations which will result from them. I am afraid that we shall sign two contradictory engagements, and I should like a competent person such as M. Etienne to give us some information on this subject.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — It is somewhat difficult for me to reply point-blank to this question. I imagine that if this case arises, the Central Office will naturally have to come to an agreement in the first place with the Swiss Federal Council, which is our supervisory authority, and which is in charge of our diplomatic relations with the contracting States. This question is clearly of a diplomatic nature. It will follow its course through the channel of the Foreign Offices of the States parties to the Convention, and their reply

will reach us through this channel also. You speak further of the withdrawal of certain States,—of denunciation. This is regulated by Article 60 of our Convention :

ARTICLE 60

The present Convention shall bind each signatory State for a period of three years, to date from the day on which it shall come into force. Any State which may wish to withdraw on the expiration of this period, shall notify the other States one year beforehand. In default of notification, the engagement shall be considered as renewed for a fresh period of three years.

This last obligation is not absolute, and the period is now simply one year.

In order to allay your misgivings as regards the scope of the new Article 6, I will repeat what I said yesterday, that the Central Office has already had relations of a very friendly nature with the League of Nations. The principle of the Central Office was, of course, to reply to all questions sent to it except as regards the interpretation of the Convention, a domain from which it is excluded. We are therefore fully entitled to enter into direct relations with the Advisory Committee on Communications and Transit, and in order to do so we do not require the consent of anyone. We are an autonomous Office, and we shall be delighted to correspond directly with the Committee.

M. CARACOSTEA (Roumania; speaking in French). — I thank you for your statement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I had the honour yesterday to propose the adoption of Article 6 with the omission of the words between square brackets. The discussion which has taken place today has convinced me personally that we should omit this article, which has given rise to more discussion than any other. There is yet another reason which militates in favour of the omission of the article even in the form drafted by the Sub-Committee. Article 6 speaks of relations between the Advisory Committee and the International Office. The title itself should not remain. In fact, what was anticipated was a Permanent Committee on Communications and Transit, but this permanent character, as such, was not recognised by the Geneva Assembly. In these circumstances, how could we vote for an article which would perpetuate another view? It would be contrary to the spirit of Geneva. I remember that when the Resolution of December 9th was submitted to the Geneva Assembly, keen opposition was shown by many delegations, which are not all represented here. In my opinion, we have before us a question of principle to which we should give further reflection. I think this article would not be in place in the Draft Convention which we are discussing, and that we cannot contravene the provisions of Article 24 of the Covenant. For all these reasons I propose that Article 6 be omitted.

The CHAIRMAN. — This morning the Sub-Committee which you appointed brought forward an almost unanimous recommendation. If it had not been for the absence of the Delegate of Uruguay, you would have voted on that recommendation. Since then the Delegate of Uruguay has arrived, and has very clearly and explicitly given the reasons for his objection. I think it would be the right course for the Committee to vote upon this text. It adds one more to that increasing list of what I may call *highly desirable* articles.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would beg the Chairman, in accordance with the rules of procedure, to put to the vote my proposal to omit the article.

The CHAIRMAN. — In that case we should also have to vote on the Uruguayan and Italian amendments. I am afraid that that means an adjournment. None of those amendments has been handed in to the Officers of the Conference; they have simply been suggested across the table during speeches.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — According to our rules of procedure, the most extreme proposal must be put to the vote first. My proposal, the object of which is to omit the article altogether, is the most extreme. It must therefore be put to the vote first. If it is rejected, the amendment of the Italian Delegate and that of the Delegate of Uruguay may be put to the vote. I hope the President will excuse me for pressing this point.

The CHAIRMAN. — I was not referring to the order of the amendments. I merely said that if it were insisted on, we should have to vote on each of the amendments. I think we might adjourn the meeting and leave the voting over until tomorrow.

The meeting adjourned at 1 p.m.

FIFTH MEETING OF THE COMMITTEE ON RAILWAYS

(Wednesday, April 6th, 1921, at 10 a.m.)

REPORT ON PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE — DISCUSSION OF ARTICLE 6 (contd.) — DISCUSSION OF PREAMBLE — DISCUSSION OF ARTICLES 7 AND FOLLOWING ARTICLES — APPOINTMENT OF RAPPORTEURS.

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT ON PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Sub-Committee met this morning, and I have the honour to submit to you on its behalf a draft letter to be sent by the Conference to the Chairman of the future advisory and Technical Committee for Communications and Transit. The letter reads as follows :

SIR,

A *vœu*, the text of which you will find attached, proposing to grant concessions in the matter of fares to blind workers travelling in the exercise of their profession, was brought before the General Conference on Communications and Transit at Barcelona by the International Labour Office.

In view of the nature of its powers and the clearly-defined object for which it was assembled, the Conference did not think that it could discuss this *vœu:* but, recognising the eminently humanitarian character of the suggestion of the International Labour Office, it decided to forward this *vœu* to you with a view to its consideration by the Advisory Committee. It appears, moreover from statements of several Delegates, that measures of the same kind have been taken in various countries on behalf of soldiers disabled in the war.

I have the honour to be, Sir, etc.

The CHAIRMAN. — If there is no objection I propose to notify that this text has been unanimously adopted.

DISCUSSION OF ARTICLE 6 (contd.)

We will now pass to Article 6, which was discussed at some length yesterday, and to which amendments have been submitted on which the Committee must vote. The first of these amendments, submitted by the Serb-Croat-Slovene Delegation, consists in omitting the article altogether.

M. CARLIN (Switzerland; speaking in French). — I think it is difficult to vote at once on the Serb-Croat-Slovene proposal before knowing what will be the text of Article 6 as proposed by the Sub-Committee which you appointed, and whose decision was unanimous except for one vote. The proper procedure seems to me to be to put this text to a provisional vote only; if it were rejected, the fact of rejection might influence the final vote on the omission of the article. The voting would not of course be final, but would be subject to the vote to omit Article 6. Indeed it is important to us to know whether the text proposed by the Sub-Committee has any likelihood of being accepted. For my part if it is to be rejected, I shall vote for the omission of

the article. But if I were asked to vote at the outset for the omission of the article, I should not know what to do, especially as I am bound, in that I have given my assent to the text proposed by the Sub-Committee.

The CHAIRMAN. — I quite appreciate the difficulty experienced by the Swiss Delegation, but the Committee will remember that M. Avramovitch insisted on the right to have his amendment put first. At the same time, even if it is rejected, he would again have an opportunity of carrying it when we come to put the question that the article be adopted; the whole question could then be rejected by a majority.

M. AVRAMOVITCH (speaking in French). — I proposed yesterday to omit this article for two reasons. The first was of a practical nature. The relations which this article aims at creating already exist in virtue of Article 24. Moreover, the statements made by the Director of the Office are most reassuring in this respect. There is yet another reason for which I asked for the article to be omitted. If we allow it to remain, we compromise the competence of the League of Nations and the competence of this Conference. In other words, I am not sure that we are authorised to take up again a question which has already been settled. I further pointed out, if I remember aright, that certain States at the Geneva Assembly raised a somewhat serious question; they did not wish to allow a technical organisation such as the Advisory and Technical Committee to become a kind of super-Ministry of Public Works. It was for this reason that they did not give it the name of *Permanent Committee*, but only that of *Advisory and Technical Committee*. I was very much concerned with the question, and I should be very sorry to see anything perpetuated which the Geneva Assembly did not desire. For these reasons I ask for the article to be omitted altogether; at the same time the Advisory and Technical Committee, the organ of the League of Nations, would retain full initiative to take all useful measures whenever it might think them necessary.

It is most desirable that there should be relations between the international railway offices on the one hand and the League of Nations and the Advisory and Technical Committee on the other. It must not be thought that I am opposed to such relations,— on the contrary; but I would not like, by means of conflicting articles, to create a situation which would be difficult from the legal point of view. For this reason I would beg the Secretary-General of the Conference to give us some information on this point, and I reserve the right to speak again afterwards. Are my anxieties well-founded or not? If the Secretary-General tells me that they are groundless, I am quite likely to withdraw my proposal. I am not animated with a spirit of contrariness, but with the desire to elucidate a point which appears to me obscure. I shall then perhaps propose an addition to the Final Protocol rather than to the Convention.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Mr. Chairman, I think that M. Avramovitch's explanation of his proposal is somewhat complex and, if I understand aright, one of the reasons for which he proposes the omission of the article is that Article 24 of the Covenant should not be prejudged. I think that point is indeed a very important one, and whatever we may do here, whatever text may be adopted, it is obvious that nothing which may be inserted can prevail against Article 24 of the Covenant and the interpretation of it which may be given in future by all the parties and by the League of Nations. This must be set apart. It is useless, in a technical Conference such as this, to begin a discussion on the interpretation of the Covenant. I think this is not the place for such a discussion. On this point the Conference appears unanimous.

I will venture, however, to point out to M. Avramovitch that the Sub-Committee took all necessary precautions on this subject; in fact its text begins with the words *subject to the provisions of Article 24 of the Covenant...* On this point I venture to suggest what is, I think, a purely drafting amendment. I propose to put *without prejudice to...* instead of *subject to...* I think that this alteration is calculated to satisfy M. Avramovitch. Indeed I think a misunderstanding has arisen; the words *subject to* might lead to the belief that Article 24 of the Covenant stipulates the contrary. What we wish to say is simply that we are leaving untouched the provisions of this article. The rest of the text forms a practical solution which does not raise any other question.

I really think that M. Avramovitch has gone somewhat beyond his own idea in saying that the text of the Sub-Committee might have the effect of instituting a super-Ministry of Public works, or at least might give a handle to the criticisms of those who wish to avoid the institution of a super-Ministry of Public Works. No-one ever intended, by creating the Advisory and Technical Committee, to create a super-Ministry of Public Works. But in any case, if ever—and very mistakenly—this organisation could appear in that light, it would certainly not be as a result of the fact that it maintains direct relations with other international organisations, nor of the fact that it received a report from these organisations, or that it exercised, in any respect whatever, excessively sovereign functions. As M. Avramovitch was good enough to ask my opinion, I think that in these circumstances, and if this interpretation is entered in the records, it would be better to vote for the Sub-Committee's text; it has the advantage that it is the result of an almost unanimous agreement, it raises no question of a legal nature, it makes all reservations as regards the future, and in my opinion it entirely corresponds to the ideas expressed by M. Avramovitch himself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like first of all to point out that it was not I who made the remark in connection with the institution of this Committee. I said that at the Geneva Assembly certain States were afraid that a kind of super-Ministry of Public Works might be created, and for this reason they asked for the words *Permanent Committee* to be omitted and for the words *Advisory and Technical Committee* to be substituted for them. I thought that if we adopted Article 6 we should again be raising this question, and we should be taking a decision which was rejected by certain States at the time of the Geneva Assembly. As regards the statements made by the Secretary-General, I am very pleased with the alteration which he has suggested, and I ask whether the title of Article 6 will remain in its present form, that is to say *Relations between the Permanent Committee and the International Bureaux*, or whether the title will be changed. I think it would better for it not to remain.

There is another reason, which I will not raise here. We have other Conventions to consider,—the Convention on Navigable Waterways and the Convention on Transit; and nowhere have we said that these relations between the Advisory and Technical Committee and the Offices should exist. I think, then, that we must not make an exception for the Convention which we are now discussing. If the Committee agrees on this point, I will withdraw my proposal to omit the article; but I must state that I have done my duty and have acted according to my conscience. I think that in any case the words *relations between...* should be deleted.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — In order fully to satisfy M. Avramovitch and the very just remark which he has made, it would be well, in accordance with what was decided for the other Conventions, not to mention the name of the Advisory and Technical Committee in the text of the Convention, and to substitute for it *The League of Nations*. In practice it will amount to exactly the same.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — This alteration entirely satisfies me. My proposal had no other object but to arrive at the result which the Secretary-General has indicated. In these circumstances I withdraw it.

M. CARLIN (Switzerland; speaking in French). — For the sake of information I should like to know whether the new text proposed by M. Avramovitch applies only to the title, or to the text itself of Article 6 as well. In any case I wish to say that I accept it.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It applies both to the title and to the text.

M. CARLIN (Switzerland; speaking in French). — We should say then... *that these Bureaux should exchange directly with the League of Nations.*

The CHAIRMAN. — We have now to vote on the amendment proposed by the Delegate of Uruguay.

The amendment was rejected.

We now pass to the text itself, which was adopted almost unanimously by the Sub-Committee, but which has been modified, and the new version of which has, I think, the support of the Members of the Sub-Committee.

M. SINIGALLA (Italy; speaking in French). — As a result of the discussion which took place yesterday morning, I had the honour yesterday evening of presenting a new text of Article 6, containing purely formal alterations only, which did not in any way affect the basis of the provision approved by the Sub-Committee. The alterations which I proposed to introduce into the article itself were entirely in accord with the proposal which M. Avramovitch has now made. Their effect would be to omit the reference to the Advisory and Technical Committee and to substitute for it the words *the League of Nations*. As M. Avramovitch's proposal has been adopted, I wish to say that I withdraw my amendment.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The text of Article 6, then, reads as follows :

Relations between the League of Nations and the International Bureaux.

Without prejudice to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable in cases in which existing Conventions or future Conventions referred to in Article 5 involve the creation of international bureaux that these bureaux should exchange directly with the League of Nations any useful information relating to the exercise of their functions and submit to it an annual report.

The CHAIRMAN. — I put to the vote the text of Article 6 as proposed by the Sub-Committee and as just read.

Article 6 was unanimously adopted.

DISCUSSION OF PREAMBLE

With reference to the Preamble, which was discussed at length yesterday and on which we proposed to vote to-day, I would claim the indulgence of the Committee while I put to it the result of my own consideration of the matter. It seems to me that it would be desirable for two reasons to avoid a vote to-day if possible. First, I am inclined to the opinion, subject to your approval, that it is scarcely within our competence, as a Committee of the Conference, to change entirely the Preamble of a Convention which has been submitted to us by the Plenary Conference. I cannot help thinking that if such an alteration is made, it ought to be made in Plenary Conference. I also think that, whatever we do here, whichever view we take, the point is certain to be raised again in Plenary Conference. The other point to which I wish to call your attention is that if we alter the Preamble in the sense proposed by the French Delegate, it will be of very little use to discuss at all the articles from Article 7 to the end, or most of them. If later, in the Plenary Conference, the original wording were restored, the work consequent on that restoration would not have been performed. There is another reason. Although many of the delegates here are Chief Delegates, yet many of them are not, and this question, being one of policy, seems to me within the province particularly of the Chief Delegates. I therefore suggest that we should not take a vote, but that we should ask the Rapporteur to mention the divergence of opinion in the Report, in order that the matter may be settled in Plenary Conference.

M. LOISEAU (France; speaking in French). — I wish to say that I give my hearty support to your proposal. I do so the more willingly because it is in complete accord with a declaration which M. Sibille, the head of the French Delegation, instructed me

to make. M. Sibille not only approves in every point the view and the conclusions which I have defended before you, but he reserves the right to return to them and speak further upon them in Plenary Conference. M. Sibille also asked me to tell you that he was at the disposal of this Committee if it wished to hear him. I think that in view of the proposal which the Chairman has made this suggestion becomes of less importance.

The CHAIRMAN. — If there is no objection, I consider that the Committee accepts my proposal.

DISCUSSION OF ARTICLE 7 AND FOLLOWING ARTICLES

We now pass to Article 7, which I will read :

Application of the Conventions in time of war.

The stipulations contained both in the present Convention and in the Conventions referred to in Ar icle 4 shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals

No amendment to this article was put in. I will put it to the vote, it being understood that for this article, as for the following ones, the necessary alterations will be made to bring them into conformity with the corresponding articles in the other Conventions.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I greatly regret to have to occupy your time again on this fundamental question of *recommendations* or *convention*, but I wish to state that the Brazilian Delegation will not consider itself bound by the vote taken on all these articles. The fundamental question still remains in suspense.

The CHAIRMAN. — Obviously these articles will only remain if the Preamble is not altered.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — We must not be liable to be told that we have accepted the Convention because we have already voted for some particular article, as was done yesterday in connection with Article 4. The position must be quite clear.

M. LOISEAU (France; speaking in French). — If I understand the Brazilian Delegate's observation aright, he means that for these articles we should take a conditional vote subject to the Preamble remaining in its present form.

The CHAIRMAN. — This is quite clear. The statements of the Brazilian and French Delegates will be entered in the records; there will thus be no need to fear the consequences referred to by the Brazilian Delegate.

M. WIELOWIEYSKI (Poland; speaking in French). — Does the President think that this question could be raised in Plenary Meeting when the Report of the Committee is discussed, or that it could be dealt with as a separate question at the next Plenary Meeting? It is very awkward to discuss these articles conditionally; we feel that we are beating the air. It is deceptive, particularly for those who advocate the form of recommendations, to pursue a discussion on articles which may afterwards be rejected. Could you not see your way to refer this question to the Plenary Assembly at the very next meeting, that to be held this afternoon? The discussion of the following articles could then with advantage be resumed in Committee.

The CHAIRMAN. — The course I shall follow as regards the Preamble is to report immediately to the President of the Conference who will decide how soon the question is to be brought up in Plenary Conference. If it is not brought up specially it will occur in the Report of the Committee. But I do appeal to the Polish Delegate; all the articles which we have to consider now, from Article 7 to the end, can be passed in a few words. The contentious matter in them has already been discussed in other Conventions, and an agreement reached. It is perfectly true that under certain conditions that work might be wasted; on the other hand, under other conditions it would be very useful to have performed it, and it will take such a short time, I hope, that I think we might proceed.

I now put to the vote Articles 8, 9 and 10, which correspond respectively to Articles 9, 12 and 14 of the Convention on Freedom of Transit.

Articles 8, 9 and 10 were adopted.

The Roumanian Delegation has submitted an amendment to Article 11.

M. CARACOSTEA (Roumania; speaking in French). — I proposed the omission of Paragraphs 2 and 3 of Article 11 because I should like these paragraphs to be brought into accord with the new text of the Transit Convention. I therefore confine myself to asking you to refer them to the Drafting Committee, which will bring these articles into accord with Article 15 of the Transit Convention. I withdraw my amendment, on the understanding that the texts of the articles of both Conventions are brought into accord.

The CHAIRMAN. — As M. Caracostea has withdrawn his amendment, I will put to the vote Articles 11, 12, 13, 14, 15, 16, 17, 18 and 19, which correspond respectively to Articles 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Draft Convention on Freedom of Transit, and which, as such, have already been discussed.

Articles 11, 12, 13, 14, 15, 16, 17, 18 and 19 were adopted.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — Would it not be possible to insert in the Railways Convention an article similar to Article 7 of the Transit Convention?

M. POLITIS (Greece; speaking in French). — Are you not satisfied with the fact that Article 6 *a*), proposed by the Italian Delegation, has been accepted?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to point out that the Portuguese Delegation has already received satisfaction by the acceptance of Article 6 *a*).

The CHAIRMAN. — I think indeed that Article 6 *a*), which was adopted on a proposal of the Italian Delegation, meets your requirements.

APPOINTMENT OF RAPPORTEURS

We have not yet appointed Rapporteurs. I propose M. Satake, Delegate of Japan, and M. Politis, Delegate of Greece.

This was decided.

The CHAIRMAN. — Our labours are now completed. I thank you for your collaboration and your patience.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — Now that our work is completed, I should like to thank the Chairman for the goodwill with which he has directed our discussions and the impartiality which he has shown to all of us. I myself

am most indebted to him in this respect. I thought that before we separated I ought to interpret the sentiments of all my colleagues in these words.

M. LOISEAU (France; speaking in French). — I wish to associate myself with the Brazilian Delegate in his appreciation of the manner in which the Chairman has presided over our discussions, and to assure him that we all share the sentiments of gratitude expressed by M. Barboza Carneiro for the manner in which he has carried out his task.

The CHAIRMAN. — I thank you very much. I have felt it a very great honour to be allowed to preside over this Committee, and I am only too conscious that my deficiencies were such that, if it had not been for your patience and consideration, I should not have been equal to this task which has ended so happily.

The meeting rose at 11.20 a.m.

PART III

REPORT

OF THE

COMMITTEE ON RAILWAYS

AND

DISCUSSION IN CONFERENCE

TWENTY-THIRD MEETING OF THE CONFERENCE

(Tuesday, April 13th, 1921, at 4.30 p.m.).

REPORT OF COMMITTEE ON RAILWAYS — DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS

The meeting opened with M. Hanotaux, President, in the Chair.

The PRESIDENT (speaking in French). — M. Monnet, Deputy Secretary-General of the League of Nations, is present at this meeting and is assisting the Officers of the Conference in his official capacity.

REPORT OF COMMITTEE ON RAILWAYS

We will begin our discussion of the Report submitted by MM. Satake and Politis on the work of the Committee on Railways. Before asking M. Satake to speak, it is my duty to thank the Rapporteurs on your behalf for the admirable work which they have accomplished, and also for the invaluable assistance which they will give us during the course of this debate. I should also like to thank Sir Francis Dent, Vice-President of the Conference, who was Chairman of the Committee, and who is present at this meeting and will, I trust, give us the benefit of his special knowledge.

M. SATAKE (Japan; Rapporteur; speaking in French). The Committee to which you referred the Draft Convention on the International Regime of Railways, which was submitted to you, entrusted us with the task of reporting to you the results of its labours.

The Committee's task was an easy one; in fact, five short meetings sufficed for it to complete the mission with which you entrusted it. Its work was rendered easier owing to the fact that, as the Convention on Railways was a derivative and complement, so to speak, of the Convention on Freedom of Transit, most of the principles and provisions contained in the former have been introduced into the latter, and had already been debated and adopted at the time when it was discussed. We must add, however, that the facility and rapidity with which the Committee was able to fulfil its task were also due both to the goodwill and conciliatory spirit manifested by all the delegates on this Committee, and also—and above all—to the skill, impartiality and goodwill with which the Chairman, Sir Francis Dent, directed the discussion. We have particular pleasure in reporting to the Conference, first of all, that the Committee, when dissolving, expressed to its distinguished Chairman its thanks and gratitude for the manner in which he carried out his difficult task.

On a motion of the Chairman, the Committee postponed the discussion of the Preamble until after the discussion of the articles which are essential parts of and peculiar to the Draft Convention, and passed on to the consideration of the first and following articles.

ARTICLE 1. — With regard to Article 1, the following amendments were brought before the Committee :—

a) Roumanian Amendment.

In this amendment the Roumanian Delegation proposed to omit the words *mails and postal parcels* wherever they occur, in order to bring the wording of this article

into accord with that of the Convention on Transit. In the discussion of this amendment, the following delegations spoke in favour : Belgium, France, Greece, the Serb-Croat-Slovene State, Austria, Italy and Persia, and against : Czecho-Slovakia.

The question having been raised whether the Madrid Postal Convention applies to the transport of mails and postal parcels by rail, the Delegate of Persia, who had been present at Madrid and had signed the Postal Convention, asserted that the latter applied both to transit and to railway transport.

As a result of this discussion, the Roumanian amendment was put to the vote, and was adopted by 24 votes to 3.

b) Italian Amendment.

The Italian Delegation proposed to substitute for the words : *agree to recognise as highly desirable* the words, *undertake to adopt*, giving as a reason that the recommendation as expressed in the article adds nothing to what already exists in all international railway relations. The Italian Delegation added that a failure to undertake this obligation would constitute a retrogression from the existing state of affairs. The chief opposition to this amendment came from the Spanish Delegation. The Delegation of Great Britain declared itself in agreement with the Spanish Delegation, as it considered that the words *undertake to adopt* were somewhat too rigid, in view of the fact that the Convention does not apply only to European railways, but also to the railways of the whole world. The British Delegation therefore proposed a milder wording, as follows :— *undertake to adopt or encourage the adoption of...* The Italian Delegation accepted in principle the proposal of the British Delegation. The Czecho-Slovak and Greek Delegations supported the Italian amendment, but the French Delegation and the Serb-Croat-Slovene Delegation proposed that the text of the *Green Book* should be retained. The Greek and Czecho-Slovak Delegations repeated their view that they could not conceive of a Convention in which no obligations were undertaken. The Brazilian, Polish and Belgian Delegations also opposed the Italian amendment. Finally, this amendment was put to the vote and was lost by 23 votes to 4.

c) A Czecho-Slovak Amendment covering the same ground as a German Amendment.

By this amendment it was proposed to add after the words *by a single waybill* the words *subject to the same obligation* (*uniform consignment note*). It is clear from the debate which took place on this subject that the addition proposed was intended to explain the phrase in the article *more particularly as regards the through transport of goods, whenever possible by a single waybill*, and also to bring international goods traffic under a uniform code of legislation which should—as regards international goods traffic on the continent of Europe—be the one established by the Bern Convention, and in other continents, any other special Convention which may exist or may be concluded between any other group of States. The amendment was put to the vote and was adopted by 20 votes to 3.

d) Italian Amendment.

This amendment proposed that the words *la forme d'établissement de tarifs communs* (*the form of establishment of common tariffs*) should be substituted for *le mode d'établissement de tarifs* (*establishment of... tariffs*). The Czecho-Slovak Delegation, on the other hand, stated that they preferred not to add the word *common* to the *Green Book* text, since in its opinion this text meant that even local tariffs should in theory be established in such a way as to facilitate international traffic. The Belgian Delegation proposed to substitute in place of *common tariffs* the words *international tariffs ;* the object of this was to avoid any uncertainty. The Italian Delegation supported this proposal, and the words *the form of establishment of international tariffs* was adopted.

The same Italian amendment involved the deletion of the words *their rates ;* this delegation considered that tariff rates should not be made the subject of negotiations in connection with the establishment of tariffs, that the rates are generally the same as those of the local tariff scales for each State, and that the question is specially reserved for the authorities of each individual country. The deletion of the words *their rates* was adopted without opposition. The complete text of Article 1, as finally amended, was adopted.

It will be observed that the text of Article 1 has been slightly altered by the legal experts and the Drafting Committee, with a view to rendering it clearer. Further, both in Article 1 and in Article 2 the words *without prejudice to the provisions of the Convention on Freedom of Transit* have been deleted and transferred to a new article which is inserted in the Convention and reads as follows :—*The present regulations in no way affect the rights and obligations which may result for any of the Contracting States from the Convention on Freedom of Transit.*

It will also be observed that throughout the Convention the words *High Contracting Parties* have been replaced by the words *Contracting States*, in conformity with the text of the Transit Convention, without implying any liability as regards the final text. The same applies to the use of the words *Convention* and *Regulations*.

Article 2. — On the subject of Article 2 the following amendments were brought before the Committee.

a) Italian Amendment. This amendment was similar to that already referred to under *b*) in connection with Article 1. As a result of the decision taken with regard to Article 1 the amendment was withdrawn.

b) Czecho-Slovak Amendment. This amendment is in the same sense as that under *c*) by the same delegation with regard to Article 1. It was adopted, and the words *subject as far as possible to the same obligation* were added at the end.

M. Étienne, Director of the Central Office at Bern, having pointed out the omission in Article 2 of reference to *through luggage registration tickets*, the Committee recognised the justice of his observation and decided to add to the end of the article the words *as well as through luggage registration tickets, subject as far as possible to the same obligation.*

Article 2 was adopted as amended.

Article 3. — On Article 3 the Spanish Delegation proposed an amendment with the object of excluding from the provisions of the article the obligation to change the gauges of two adjacent countries when their characteristics were essentially different. This amendment was strongly supported by the delegations of all those countries where the gauges of the railways differed from the normal gauge. In the course of the discussion, other delegations intervened to observe that the interchange of rolling-stock might be rendered difficult or impossible from the fact of differences in the loading-gauge. The Committee took into consideration both the Spanish amendment and the suggestions of the other delegations, and after having heard the Sub-Committee to which it sent this amendment for consideration, it was decided to add to the end of Article 3 the following paragraph :—*it is clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.*

Article 3 was adopted in its amended form.

The Italian Delegation proposed to add after Article 2 a New Article, to read as follows : *The High Contracting Parties agree to undertake in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international traffic, to adopt as far as possible all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.*

In support of his proposal the Delegate of Italy pointed out how desirable it would be to replace steamtraction everywhere by electric traction, with a view to the improvement of international communications, but as electrical power might abound in one country and be insufficient in a neighbouring country, it would be desirable, after the countries which possess this power have satisfied their own needs, that they should undertake to cede their surplus electrical power to those adjoining countries which lack it. The Delegations of Paraguay and Brazil supported the Italian proposal on condition that it would be brought forward as a recommendation and not as an engagement. The Italian Delegation accepted the view of these two delegations.

Against this the Delegations of Belgium, the Netherlands, Switzerland, Austria and France raised the point that this was an entirely special question, that it was not in its

place in the Convention, and that it should be reserved for special agreements in each particular case. The Belgian and French Delegations also adduced strategic reasons.

Eventually the Swiss Delegation proposed that it would be preferable, in order to avoid any misunderstanding, to reject altogether the additional article proposed by the Italian Delegation. The Chairman put to the vote the text of this article as amended by the Brazilian Delegation and accepted by the Italian Delegation. The article was rejected by 16 votes to 6.

Article 4. — The following amendments to Article 4 were before the Committee :—

a) Italian Amendment.

The object of this amendment was to substitute for the words *local tariffs on a different basis*, the words *different tariffs on a different basis for internal, import, export or transit traffic.*

The Italian Delegation explained that this amendment was only a textual change. As was evinced in the discussions that took place and also in the *Green Book* commentary, each country would have the right to establish for its home traffic tariffs differing not only from import and export tariffs, but also from transit tariffs. In fact, each tariff system includes several classes of tariffs, local tariffs, import, export or transit traffic.

The Belgian Delegation, whilst supporting the Italian proposal, suggested the addition after the words *must not consider as either preventing...* of the words *the existence and establishment.*

The Czecho-Slovak Delegation also supported the Italian amendment, proposing, however, that a special article should be inserted on the subject of tariffs and that the passage treating of special conventions should be transferred to another article.

The French Delegation likewise gave its support, but suggested that the text should be worded as follows : *different tariffs for internal, import, export or transit traffic.*

The Delegation of the Serb-Croat-Slovene State declared itself in agreement with the Italian proposal as amended by the French Delegation. After discussion, the Italian proposal, as amended by the Belgian and French Delegations, was accepted.

b) British and Czecho-Slovak Amendments.

These amendments refer both to Articles 4 and 5: they approximate on certain points, and are essentially different in others. The two delegations agreed in desiring to place in a new article the question of special conventions referred to in preceding articles. The British Delegation, however, was of opinion that the principle of equality and the question of tariffs should be dealt with solely in the General Convention, and that the special Conventions should only deal with the principles laid down in Articles 1, 2 and 3. The Czecho-Slovak Delegation, on the other hand, strongly supported by the Serb-Croat-Slovene Delegation, desired that the special Conventions should ensure the application of the principles laid down both in Articles 1, 2 and 3 and also in Article 4.

Both these amendments had the effect of excluding from Article 4 the question of combined traffic by rail and water, including maritime traffic, and rightly so, for it is clearly stated at he end of the first paragraph of Article 4 that the provisions of that article in no way *concern the question of combined rail and sea tariffs.* The British amendment further proposed to delete the phrase *over the same throughout route, in the same direction, and in the same conditions,* while the Czecho-Slovak amendment kept these words. This last question was discussed, and the Committee decided to retain these words. In the course of the discussion, M. Étienne, the Director of the Central Office at Bern, was asked to give his opinion on the wording of the second paragraph of Article 4, and suggested that after the words *having as its object the granting...* the phrase *to one or more passengers* should be added, to show clearly that the article refers to passenger as well as goods traffic.

The Italian Delegation asked that in order to bring the text of Article 4 of the Railways Convention into accord with that of Article 4 of the Convention on Freedom of Transit, the following words should be inserted :—*Having regard to the traffic conditions and to commercial competition.*

The Brazilian Delegation brought forward an amendment concerning the application to the whole journey both by land and by water of the principle of equality of

treatment with regard to tariffs. In the course of the discussion the Brazilian Delegation withdrew its amendment in view of the fact that another Committee was dealing with the same question from a more general point of view.

After long discussion, the Czecho-Slovak amendment was adopted in principle, and was referred to a Sub-Committee, together with M. Étienne's suggestion and the amendment of the Italian Delegation mentioned above, in order that the whole text of Article 4 might be co-ordinated. The Sub-Committee produced the text of Article 4 as it now stands, which was unanimously adopted by the Committee.

Article 5. — On Article 5 the Committee had before it two amendments brought forward by the British and Czecho-Slovak Delegations respectively, and another amendment proposed in the course of the meeting by the Belgian, Brazilian and Chilian Delegations. This last amendment, the effect of which was to limit the scope of Article 4 to special Conventions to be concluded in the future, thus eliminating both the compulsory character of the article and the element involving its immediate application, was opposed by several delegations, particularly by the British, Czecho-Slovak, Italian, Swiss and Greek, and was withdrawn before being put to the vote. The British and Czecho-Slovak Delegations, as their amendments show, both agreed that the application of the principles laid down in Articles 1, 2 and 3 should be ensured by special Conventions. But the British amendment provided that these Conventions should ensure the application of the principles laid down in the said article *as far as possible*, and that of the Czecho-Slovak Delegation added that these conventions should be concluded in respect of groups of contiguous territories. These two amendments were merged without difficulty by mutual concessions on the part of both delegations, and the final text was put to the vote and carried by 20 votes to 5.

The legal experts and the Drafting Committee changed the order of Articles 3 and 4, as the latter now only refers to Articles 1, 2 and 3.

Article 6. — On Article 6 (1) the Committee had before it an amendment of the

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(1) The subject of Article 6 led to the following discussion at the meeting of the Railways Committee at which the Report of M. Satake and M. Politis was read.

M. CARLIN (Switzerland; speaking in French). — Whilst paying a tribute to the work of the Rapporteurs, I should like to point out with regard to Article 6 that one point has not been mentioned in the records of the discussion of the amendment proposed by the Swiss Delegation—a point which I brought up several times and which I should like to see noted in this report, namely, that this amendment was proposed by the Swiss Delegation, not on behalf of the Swiss Government as such, but on behalf of the Swiss Government in its capacity as the authority which organises and supervises the international offices established at Bern. If the Rapporteur has no objection, therefore, I would propose that we should replace the first paragraph, dealing with Article 6, by the following text, which would also have the advantage of being much shorter, as the second part of this paragraph only repeats more or less the idea contained in the first part :—

"On Article 6 the Committee had before it an amendment of the Swiss Delegation proposed in the name of the Swiss Government in its capacity as the authority for organising and supervising the international offices established at Bern, which proposed that International Offices should fulfil the conditions laid down in that Article as soon as all the States participating in the Conventions, by which the said Offices are instituted, have consented thereto."

M. POLITIS (Greece, Rapporteur; speaking in French). — I would ask permission to state in reply to the Delegate of Switzerland that he is here raising a question of principle. I thought it was understood that only delegates of countries sitting at the Conference have the right to propose amendments, whereas all the representatives of organisations and commissions may only be asked to give their opinion. It is for the Conference to decide whether it should allow them to take part in the debate. It was for that reason that I did not mention a part taken in the debate by a person acting in a capacity other than that of delegate.

M. CARLIN (Switzerland; speaking in French). — There is a misunderstanding. I certainly took part in the debate in my capacity as Delegate for Switzerland, and only in that capacity—not in the name of the Federal Council as such, but in the name of the Federal Council as the organising and supervising authority for the International Offices. I should like to emphasise this point. The objection which has been raised therefore seems to me to be unfounded.

M. POLITIS (Greece, Rapporteur; speaking in French). — The question seems to be outside the scope of the Rapporteur's duties, and possibly even outside the scope of the work of this Committee. I therefore propose that it be referred to the Jurists' Committee.

The CHAIRMAN. — May I suggest that we should leave M. Politis' text as it is, and that M.Carlin should take the opportunity of making his position clear in plenary meeting.

M. POLITIS (Greece, Rapporteur; speaking in French). — I should like to point out that the words *in so far as all the States adhering to the Convention...*, which M. Carlin has altered in the text which he proposes, were in his amendment itself, and that was why I kept them in my Report.

M. CARLIN (Switzerland; speaking in French). — I put in *as soon as* because it seemed to me to be better French.

M. POLITIS (Greece, Rapporteur; speaking in French). — The terms of the amendments should be reproduced exactly in the reports. As for the Chairman's suggestion that the text of my Report

Swiss Delegation proposing that the International Offices should fulfil the conditions laid down in that article, in so far as all the States parties to the Convention by which they were instituted should consent thereto. By this provision the Swiss Delegation proposed that the International Offices whose working is provided for by existing or future Conventions, as referred to in Article 4 (now Article 5), could fulfil the conditions laid down in Article 6 only if the States parties to a special Convention by which they were instituted unanimously consented thereto.

A discussion took place on this amendment, and the Swiss Delegation declared itself prepared to withdraw its amendment should the words *existing or...* which appear between square brackets in the text of Article 6 in the *Green Book* be deleted.

The Czecho-Slovak Delegation was the first to oppose the adoption of the amendment proposed by the Swiss Delegation, declaring that it did not understand the reasons for which the Swiss Delegation objected to the International Office at Bern exchanging with the Advisory Committee useful information relating to the exercise of its functions, and submitting an annual report to the League of Nations, and that it did not see how such a provision could affect the competence of the Central Office. The Czecho-Slovak Delegation added that, on the contrary, it considered it quite natural that a Central Office dealing with a matter so important as the Bern Convention should be in touch with the League of Nations. A long discussion took place, in which several delegations took part, and, as an agreement could not be reached, Article 6 was referred to a Sub-Committee. The latter drew up an amended text, to which, however, all its members did not agree. By this text the contents of Article 6 was expressed in the form of a recommendation, which left Article 24 of the Covenant untouched. This form, which was eventually accepted by the Swiss Delegation, was declared unacceptable by the Delegation of Uruguay, which considered that it could only accept a text containing compulsory provisions.

The Serb-Croat-Slovene Delegation proposed the omission of the article, but as following a suggestion of the Secretary-General of the Conference, who was present at the meeting, and who proposed to substitute for the words *subject to* the words *without prejudice,* this delegation, considering that the alteration satisfied it, withdrew its proposal.

The text of Article 6, as presented by the Sub-Committee, was put to the vote, as modified in this discussion by the Secretary-General, and was unanimously adopted by the Committee.

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should be kept, and M. Carlin left to make his position clear in plenary meeting, it is for the Committee to decide.

M. CARLIN (Switzerland; speaking in French). — Perhaps it would be better to avoid a discussion in plenary meeting and settle the question here.

M. HANREZ (Belgium; speaking in French). — Perhaps M. Carlin would be satisfied if his declaration were inserted in the record of the meeting.

M. CARLIN (Switzerland; speaking in French). — I am quite prepared to abandon the addition which I proposed with a view to showing that I spoke on behalf of the Federal Council as organising and supervising authority for the International Offices; but I should like to keep the latter part of my wording, which I think is shorter.

M. POLITIS (Greece, Rapporteur; speaking in French). — The Swiss Delegate proposes to omit the second part of the paragraph. I would point out that it was the Swiss Delegation itself which, in its amendment, laid down that the International Offices, whose working was provided for by existing or future conventions, could fulfil the conditions laid down in Article 6, only, if the States parties to a special convention by which they were instituted, unanimously consented thereto. The qualification *unanimously* is of importance.

M. LOISEAU (France; speaking in French). — The explanations given by the Swiss Delegate seem to me to settle the matter. M. Carlin has explained to us that in this particular case he represented the Swiss Government in its capacity as administering and supervising authority for the International Offices, and not as a Government. It is, however, the Swiss Government which addresses us, and, being represented here, it is perfectly qualified to do so.

The CHAIRMAN. — Unless there is anything absolutely inaccurate in the Report we cannot ask the Rapporteurs to alter it. All the explanations that M. Carlin has given will appear in the records.

M. CARLIN (Switzerland; speaking in French). — If the Rapporteurs insist on keeping their inferior text, I have no reason to improve it. Since my proposal has given rise to remarks regarding the principle, and since it has even been said that it might be discussed in plenary meeting, I prefer to withdraw it. The text will remain as it is.

Article 6 *a*). — The Italian Delegation proposed to add a supplementary article after Article 6. This article is identical with an article of the Transit Convention, as adopted by the Plenary Committee on this Convention, and deals with special exceptions to the Convention. The Committee accepted in principle the addition of this New Article, and decided to refer the matter to the Drafting Committee.

Articles 7 to 20. — Articles 7 to 20 inclusive were conditionally adopted by the Committee until a decision should be taken with regard to the Preamble, and were referred to the Drafting Committee, in order that the wording should be brought into accord with the corresponding articles in the Draft Convention on Freedom of Transit.

Preamble. — After adopting the articles of the Draft Convention, the Committee, on a proposal of the Chairman, entered upon the discussion of the Preamble, which, as has been said, was postponed at the outset. The question whether the provisions as adopted should take the form of a convention or of a series of recommendations having been raised, the Committee decided, on the Chairman's proposal, to refer the discussion of this important question to a plenary meeting of the Conference.

The Draft Convention submitted for your approval is an achievement modest in appearance. It is true that it does not immediately and completely solve the important and complex problem of international railway transport, but it does make a stage on the road towards the general organisation of international communications. The Convention will have to be completed by special Conventions which will be concluded between neighbouring States or railway administrations. These special Conventions, which will be based on the principles of freedom and equality laid down in the general Convention, will at first deal with local conditions, but will tend gradually to merge together and will constitute, at what we hope will be no distant date, the international code for railway traffic.

By subscribing to the Convention submitted to you, you will not only be fulfilling one of the behests of the Covenant of the League of Nations, but you will at the same time be accomplishing a most valuable piece of work for the economic existence of the world,—a work for which public opinion, which is anxiously awaiting the results of this Conference, will be lastingly grateful to you.

Lastly, we desire to express our most hearty thanks to the Committee and to its distinguished Chairman, Sir Francis Dent, for the honour that it has conferred upon us in entrusting us with the preparation of this Report,—an honour which reflects on our respective countries, Japan, which has long followed the path of progress, and which ardently desires to contribute to the development of world-communications, and Greece, which is happy to join in any useful work and thus reap the fruits of that civilisation which she formerly spread so generously throughout the whole world.

The PRESIDENT. — I thank the Rapporteurs for the manner in which they have helped us to examine and comprehend the Draft Convention.

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS

The question now arises as to what will be the final form of this Convention. The Conference will doubtless desire to hear the explanation which the French Delegation wishes to give on this subject.

M. SIBILLE (France; speaking in French). — Article 397 of the Treaty of Versailles reads as follows :—

> Without prejudice to the special obligations insisted upon here by the present Treaty for the benefit of the Allied and Associated Powers, Germany undertakes to adhere to any Conventions regarding the International Regime of Transit, Waterways, Ports or Railways which may be concluded by the Allied and Associated Powers with the approval of the League of Nations, within 5 years of the coming into force of the present Treaty.

After the signing of this Treaty, a Commission, which included representatives of the different countries, was appointed at Paris to study all the questions relating to Transit and International Transport. In February 1920, the Council of the League of Nations asked this Commission to prepare General International Conventions on Transit, Waterways and Ports, and if possible on Railways (1).

Why did the Council of the League of Nations insert the words *if possible* before the word *railways* in its resolution? Because, in the opinion of the Council of the League of Nations, a General Convention on Railways, dealing with difficult and complex questions, and being necessarily composed of a very large number of articles, should be preceded by an enquiry, by considerable research, and by thorough examination. The Paris Committee of Enquiry set to work. It put before you a Draft Convention on Transit, and a Draft Convention on Waterways. It believed that it would be able to add to these a Draft Convention on the International Regime of Railways. But in the short period at its disposal it was not able—and I do not mean this as a reproach—to prepare a *General* Convention on Railways, but it did produce certain provisions, several of which are only recommendations. I have carefully read these provisions. In company with the recommendations I see only two principles laid down in the Draft Convention,—principles which have for many years been applied throughout Europe. Thus the contractual provisions of the Draft submitted to you may be summed up as the application to the whole world of the following two principles :

(1) As regards passenger traffic, no distinction shall be made based upon the nationality of passengers, and as regards the transport of goods no distinction shall be made based upon the commercial origin, point of departure or destination of goods;

(2) There shall be no private agreements granting advantages to certain consignors.

I repeat that these two principles are not new; they have for long been applied throughout Europe.

The Committee which you appointed at once recognised, therefore, that the Draft Convention submitted to you was not the General Draft Convention referred to in Article 379; I will extract the following words from the Report which has been read (2).

> The Convention will have to be completed by the Special Conventions which will be singly concluded between neighbouring States or railway administrations. Those Special Conventions which will be based on principles of freedom and equality laid down in the General Convention, will deal with local conditions, but will gradually merge together, and will constitute, at what we hope will be no distant date, the international code for railway traffic.

On this point I am in complete agreement with the Committee. It recognises that we have not been given the international code for railways and transport which we desire. It adds that this code must be prepared, and it states that, in order to do so, regional conventions must first come into existence between administrative bodies of neighbouring railways; then, when all these regional conventions have been concluded, it will be seen what are the principles contained in these various regional conventions. It will then be possible to prepare the international transport code, without giving rise to any complaints or protests, and without causing any difficulty. I agree with the Committee.

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(1) The text of the Resolution of February 13th reads as follows :—

"The Council invites the Commission of Enquiry on Freedom of Communications and Transit, meeting in Paris on the initiative of the French Government, and having as Secretary an official from the Secretariat of the League of Nations :

"(*a*) To submit to the Council proposals for the formation of a permanent organisation, as part of the organisation of the League of Nations, concerning Communications and Transit;

"(*b*) To prepare, for submission to this organisation, drafts of general International Conventions with regard to Transit, Waterways, Ports and, if possible, Railways;

"(*c*) Provisionally, and until the organisation has been formed, to advise on questions which the Council may think fit to submit to it and which fall within the jurisdiction of the League of Nations, under the terms of Article 23 of the Covenant of the League, and of the Articles in the various Peace Treaties relating to Ports, Waterways and Railways."

(2) See preceding page.

It introduced several alterations in the Draft prepared at Paris, but it reserved the question whether all the ideas which it approved would be expressed in a Convention or in a series of recommendations. This is what the report states (1) :—

The question whether the provisions as adopted should take the form of a Convention or of a series of recommendations having been raised, the Committee decided, on the Chairman's proposal, to refer the discussion of this important question to a meeting of the Plenary Conference.

I will endeavour to show you that we should be wise to confine ourselves to making a series of recommendations. The General Convention on the International Regime of Railways provided for in Article 379 should lay down the general conditions for the construction and operation of railways. As you will see, this is a vast field which is opened to the activity of those, mark you, who will make the Conventions. But in Europe part of the task has already been accomplished. By a Convention signed at Bern in 1890, the conditions for international transport are fixed and the rights and duties of those who use the railways are defined. This Bern Convention does not merely indicate under what conditions traffic may be carried on from a station situated in one State to a station situated in another with a single way-bill; it does not contain four or five articles only, as does the Draft now before us. The Bern Convention contains 61 articles, in addition to attached regulations. Why was it not confined to the fixing of the conditions in which way-bills should be issued? Because it was desired that all international traffic should be carried on under the same conditions. What was the complaint made at that time on behalf of international commerce? It was complained that when traffic was carried on between two countries the rules and regulations for this traffic, and the laws to which it was subject, varied according to the direction in which it was carried out. According to international law, indeed, contracts are regulated by the law of the place in which they were made. Take, for example, traffic from Belgium to France. Before the Convention of 1890, this traffic was carried on entirely under Belgian law. Take, on the other hand, traffic from France to Belgium; this was carried on wholly under the conditions laid down by French law. In this way it came about that varying regulations were applied for international traffic. The chief effect of the Bern Convention was to lay down the conditions in which all international traffic should be carried on. If you examine this Bern Convention you will see that it contains various provisions, the importance of which cannot be mistaken. It defines what are the responsibilities incurred by the consignors for incorrect declarations or faulty packing, and by the railway administrations in case of loss, damage, loss of weight, delay in delivery, theft, or serious fraud. It defines the conditions in which customs, octroi and police formalities are to be carried out, and lays down the regulations applicable to the calculation and payment of cost of transport. It determines the conditions under which all actions brought against the railways shall lapse, or the time-limit within which they shall be made. It thus forms a veritable code for international traffic, regulating the relations between carriers and commerce.

The Bern Convention contains one of the two provisions which we are now asked to adopt afresh, and which it is intended to apply throughout the world,—the provision regarding the prohibition of private agreements, which does not allow advantages to be reserved for individual consignors.

The Bern Convention was to have been revised before the war; the outbreak of the war rendered this impossible. But France took the initiative of denouncing the Bern Convention, and her example was followed by Belgium, Roumania and Italy. The Bern Convention was denounced by four Powers. Why? Because these Powers—France in particular—desire the Bern Convention to be completely revised. The Convention contains principles which, according to France, should be modified. Amongst these is the provision relating to private treaties, which you wish to extend to the whole world. But, you will say, does France now wish to tolerate private treaties? And you might add : In all charters granting concessions you forbade your big railway companies to conclude these special agreements; surely you will

(1) See p. 115.

not now ask for them to be authorised? No, we do not ask for that, but we wish this prohibition to be observed everywhere. We desire this provision, which you wish to extend to the whole world, to be at least interpreted in the same manner by all railway administrative bodies, by all the contracting States.

I will explain. In France, as we have said, we consider that commerce should not be protected by railway tariffs, and we claim that industry and commerce should be protected only by customs tariffs. I am in a position to remind you of these principles. When I had the honour to prepare a Report on the Treaty of Versailles, I said : Here is the policy which we follow in France; we will not have railway tariffs protecting industries. In other countries this is not so, and if you have read the *Green Book* carefully you must have noticed that certain countries claim that they can protect national industries by means of railway tariffs. What actually happens? In every country the charges levied are announced by means of tariffs which are posted up and published, and regularly approved by the State; but in certain countries again, in order to protect national industries, a bonus or rebate is granted, at the end of the year, to important consignors. We do not wish this to take place, and we desire that the article which you wish to apply to the whole world should be applied in the same manner everywhere.

M. NEUJEAN (Belgium; speaking in French). — That is what we ask.

M. SIBILLE (France; speaking in French). — If that is what you ask, the article must be modified. An example has been furnished on the other side of the Atlantic. If I am rightly informed, a law on international traffic and railways was recently passed in the United States. Private agreements were prohibited, as has been done by you; but care was taken to add what was allowed and what was expressly forbidden after this general prohibition which you wish to incorporate in the International Railway Code. You may, perhaps, say to me, "Let us come to an agreement! Propose an amendment! Complete this article as you wish..."

M. POLITIS (Greece, Rapporteur; speaking in French). — We do not agree at all.

M. SIBILLE (France; speaking in French). — Do you not agree with me as regards the interpretation of this article? Do you wish, then, to retain the power to grant rebates?

M. POLITIS (Greece, Rapporteur; speaking in French). — Not at all.

M. SIBILLE (France; speaking in French). — Then you must explain your meaning. I say that with the text which you submit there are States—I do not say that yours is among them—there are railway administrations which grant rebates.

M. POLITIS (Greece, Rapporteur; speaking in French). — Then they are in the wrong.

M. SIBILLE (France; speaking in French). — They may be, but the fact remains. I say, "There is the evil, and the remedy which you propose is inadequate". You will reply, "Propose an amendment; we will accept it, and we will agree". No. Why? Because you put before me a provision which is contained in the Bern Convention. But this Convention is to be revised and recast in the conditions laid down by the Treaty of Versailles. We cannot carry out that revision here. These are the conditions in which, according to Article 366 of the Treaty of Versailles, the revision must be effected :

From the coming into force of the present Treaty the High Contracting Parties shall renew, in so far as concerns them, and under the reserves indicated in the second paragraph of the present Article, the conventions and arrangements signed at Bern on October 14th, 1890, September 20th, 1893, July 16th, 1895, June 16th, 1898, and September 19th, 1906, regarding the transportation of goods by rail.

If within five years from the date of the coming into force of the present Treaty a new convention for the transportation of passengers, luggage, and goods by rail shall have been concluded to replace the Bern Convention of October 14th, 1890, and the subsequent additions referred to above, this new convention and the supplementary provisions for international transport by rail which may be based on it shall bind Germany, even if she shall have refused to take part in the preparation of the convention or to subscribe to it. Until a new convention shall have been concluded, Germany shall conform to the provisions of the Bern Convention and the subsequent additions referred to above, and to the current supplementary provisions.

This article is categoric; it says, "If you wish to alter the text of the Bern Convention, you shall do so, not by means of this General Convention provided for in Article 379 but by Conventions between States which are parties to the Bern Convention, and following the invitations sent out by the Swiss Federal Council, which, according to custom, will transmit to you all the documents collected by the International Office". That is what is laid down in the Treaty of Versailles.

France is a great Power; she has colonies, her authority extends beyond Europe. As regards Europe I am quite prepared to agree to the prohibition of private agreements, but as regards railways situated outside Europe, I cannot do so. Those of our colleagues who represent countries outside Europe may tell you that outside Europe it is impossible to build railways under the same conditions as in Europe. They will add that it is usually necessary to admit these very private agreements which you wish to prohibit. They will also tell you that if the Convention is adopted, you may render it impossible to build any new railways outside Europe.

I will add that for my own part I cannot enter into the obligation to apply the Convention now before us from one day to another, not, be it noted, to the railways of Continental France, but to French railways outside Europe. Why? Because France is bound by treaties granting concessions, and because she cannot add fresh obligations to those which have already been laid down and limited by the charters of the concessions.

M. NEUJEAN (Belgium; speaking in French). — But if I understand the Convention aright these treaties are to be respected?

M. SIBILLE (France; speaking in French). — No, since you completely prohibit them when you say that henceforth there shall be no more treaties. If these treaties are respected you must prove it. Are all existing treaties to be respected? If so, this must be stated, and I cannot see any such statement when I read through your Convention. Moreover, tradition should be complied with; we should not make an International Convention relating to Railways without taking into account the position of the railway administrations. In the Report there is a statement which is very true. It is that the General Convention on International Railway Transport shall be preceded by regional conventions which will be concluded between neighbouring railway administrations. This has always been the procedure followed. Take, for example, the Bern Convention to which I have referred. This Convention was signed by a certain number of States. Did these States undertake to impose the conditions of the Bern Convention on all their railways? Not at all. Some of them had granted concessions to railways, and were not in a position to undertake to impose on these the obligation to carry on international transport traffic, from one day to another, under the conditions laid down in the Bern Convention. They might have done so by resorting to their right of sovereignty. But they would have been open to claims for compensation for loss, and claims arising from cancelled contracts.

If you examine the Bern Convention, you will see that it is only applicable to those railway lines which are indicated by the contracting States. This Convention does not come into play on all French railway systems, nor on all the railway lines of the States which signed it,—it applies only to the lines mentioned in an Annex. I ask you to take a similar course, not to make a General Convention on Transport without having consulted the principal interested parties, that is to say, the railway administrations. It is for this reason that I ask you to confine yourselves to adopting the method of recommendation. I see before me M. Lankas, whom I have known for a long time,

saying, "You are wrong; you ought to accept this Convention which I prepared at Paris with the Commission of Enquiry". I reply to M. Lankas, that I prefer to take as a text another Convention with which he is quite familiar,—a very recent Convention on Transport Traffic between Czecho-Slovakia and France. You will find there, as you will see, very detailed directions concerning the policy of France with regard to international railways and transport. France wishes to facilitate international transport; she has signed the Bern Convention, and she will shortly go to Bern, or elsewhere, to sign a new convention on international transport, that is to say to bring the Bern Convention into complete accord with the present situation. France has already taken steps to assure the application of the Bern Convention as soon as possible. The Treaty which I have read—the Treaty of Versailles—states in fact in Article 366 that the Bern Convention will continue to govern international transport; but the force of circumstances is stronger than all treaties and all Conventions. In spite of the Treaty of Versailles the Bern Convention is not applicable, and cannot be applied, on account of the conditions of the railways in Europe. But France is anxious to assure the application of the Bern Convention as soon as possible, and a Conference of railway directors was held at Paris with a view to deciding as to what measures should be taken on a provisional temporary basis to facilitate the application of the Bern Convention. I had the honour to preside at this Conference, on which sat several members of the present one. We wish to revise the Bern Convention as soon as possible, and as it cannot come into force at once, we wish to add temporary provisions in order that international traffic should be facilitated as soon as possible. You will find this, indeed, expressed in Article 1 of the Convention between France and Czecho-Slovakia. This article reads as follows :

> Goods traffic between France and Czecho-Slovakia shall be carried on under the regime of the Bern Convention, on the basis of an agreement which will be concluded between the participating administrative bodies and railway companies. This agreement shall take account of the present traffic difficulties and shall in particular lay down an obligation upon consignors to notify in the waybill all the frontier stations through which the consignments are to pass.

Other articles follow. Note that this is a Convention between France and Czecho-Slovakia. Do the States concerned undertake that international traffic shall at once be carried on under certain definite conditions? No; they know that in the matter of international transport nothing can be done without the assent and the agreement of the railway administrations. The two States, therefore—France, which I represent, and Czecho-Slovakia, which is here so ably represented by my eminent colleague M. Lankas—declared in this Convention that the railway administrations would be *invited* to carry on traffic under certain defined conditions, because these two States recognise that they could do no more than make recommendations.

I would beg you to follow the example of the authors of this Convention. It is one of the latest international conventions concerning railway traffic. Follow the directions which they give you, be as far-seeing and cautious as the authors of this Convention, and say, "Yes, we intend to facilitate international traffic, and we invite all the Governments to send representatives as soon as possible to Conferences which will be held for this very purpose of settling questions of international traffic,—goods traffic, passenger traffic, interchange of stock". To repeat an idea expressed by M. Lankas at the beginning of this discussion, a conference is also essential in order to assure as soon as possible uniform regulations to govern all railway systems.

We agree on this point, but we do not go any further. Believe me, if you were to do so, you would lay yourselves open to the charge of disturbing—wantonly disturbing—the operation of railways situated outside Europe, and also to that of failing to observe scrupulously the provisions of the Treaty of Versailles. This Treaty reserves the task of ascertaining what changes are to be made in the Bern Convention, not for a conference organised by the League of Nations, but for conferences to be held at the instance of the Swiss Federal Council. These are the observations which I have the honour to submit to the Conference, and of which I trust it will take note.

M. POLITIS (Greece, Rapporteur; speaking in French). — Mr. Chairman, I am about to speak not as Rapporteur but as the Delegate of Greece. In spite of the eloquence

of the Delegate of the French Republic, I must confess that he has surprised me, I may even say disagreeably surprised me. And my surprise is the greater because it was at the instance and at the invitation of the French Government that the Commission of Enquiry on Freedom of Communications and Transit, on which I had the honour to sit, met at Paris in October 1919 (and not in February 1920), under the chairmanship of my eminent friend and comrade M. Claveille, at that time Minister of Public Works, in order to prepare the Conventions now before you. The French Delegation, which had prepared the preliminary Draft Conventions, and which, after long deliberations, during which it made every effort and expended all its energy to save and retain the most important of the principles which it had laid down, finally adopted them,—the French Delegation, I say, was composed of M. Charguéraud, whose absence from this Conference we all regret, M. Colson, Councillor of State, and the eminent Professor André Weiss. The French Government, therefore, delegated to this Commission of Enquiry men who were universally recognised as authorities on the subject. A proof of the importance which it attached to the preparation and conclusion of the Conventions with which we are now dealing is the fact that the French Delegation on that Commission, unlike the other delegations, remained in constant touch with its Government. It cannot be claimed, therefore, that it did not act in agreement with the French Government. All the States invited had no hesitation in accepting the invitation of the French Government, and in sending their delegates from the four quarters of the globe to collaborate with their French colleagues, and that at the cost of considerable financial sacrifice. Remember that our work began in October 1919 and did not end until 1920. If these States did this it was because they had become convinced that the task in which they had been called upon by France to take a part could not but be both useful and necessary for all. If, to-day, 44 States, in reply this time to the invitation of the League of Nations, have sent representatives to the Barcelona Conference, at the cost of numerous sacrifices, it was certainly not with the intention of destroying what had been created, or of adopting more or less visionary recommendations, but to discuss and conclude Conventions.

In these circumstances, to what are we to attribute the *coup de théâtre* which we have just witnessed? What are the new facts which have led the French Delegation to go back upon what the French Government so successfully began, even most commendably taking the initiative? The Delegate of the French Republic has not revealed these facts to us. The arguments which he adduced in support of the new position adopted by the French Delegation cannot constitute fresh facts, nor can they be maintained by anyone who is in a position to discuss railway questions. I do not dispute the right of any delegation to maintain any view which it considers to be in conformity with the interests of the country which it represents, but in the case of the country to whose appeal we have responded, around whom we had rallied, and with whom we have launched out in a definite direction, I venture to think that, if only to be able to state our own case, we have the right to ask it what are the reasons which have led it to detach itself, alone, from our party, while leading some of us in a totally different direction.

I will not dwell further upon this point. I raised it merely in order to justify the attitude which we took up in the past, and that which we will have to adopt here. It was to the invitation of the French Government that we replied, we collaborated with its Delegation and, following its guidance, we prepared the Draft Conventions now before us. When we separated in June 1920, and returned to our own countries, we undertook mutually to support these Draft Conventions before our Governments, and in our own case we pleaded that as France, Great Britain and all the other Great Powers, whose interests are more important than those of Greece, had already adopted these Drafts in principle, there was no reason why our country also should not adopt them.

M. LANKAS (Czecho-Slovakia; speaking in French). — Hear, Hear!

M. POLITIS (Greece, Rapporteur; speaking in French). — ...and we therefore came here, authorised and firmly resolved to adopt these Conventions finally, with certain slight alterations which we had been instructed to introduce into them, and of course so long as they were not modified to any appreciable extent.

M. SIBILLE (France; speaking in French). — I note, not without surprise, but with satisfaction, that the Rapporteur made no attempts to reply to the arguments which I expounded to you. I said, "If you make this Convention, which will in reality revise the Bern Convention, you will not be conforming to Article 366 of the Treaty of Versailles. Why? Because Article 379 does provide an International Regime for Railways which will be made under the supreme direction of the League of Nations. That is the very reason why you are at present dealing with the question of international railway traffic. But Article 366 formally reserves for the signatory Powers of the Treaty of Bern, assembled following the action of the Swiss Federal Council, the duty of modifying, if necessary, the provisions adopted in 1890 at Bern.

The argument which I presented remains unaffected. There is yet another. I said that you could not lightly apply to all the railways of the world this provision of the Bern Convention which I accepted, which I still accept, and which I should like to maintain for continental France, but which appears to me impossible of application outside Europe. You have not replied to this argument. I put forward another argument, and I now repeat it. I wish to go to Bern; I wish to go to a conference at which the signatories of the Bern Convention are to be assembled, because the provision that you wish to apply to the whole world is not applied everywhere in the same manner. There are ambiguities which must be removed. We must know clearly what it means, and I will explain.

I think that in all countries—in France at any rate— there are railway tariffs applicable to home traffic, that is to say, traffic carried on from a station situated on the territory of a State to another station situated on the territory of the same State. Then there are export tariffs, which are quite different. For these, in the interest of international commerce, substantial reductions are granted. There are transit tariffs. We have, indeed, spoken a great deal of freedom of transit, but in certain parts of Europe it is a question of who will secure transit, and railway administrations sometimes have recourse to more or less doubtful methods in order to secure transit traffic for themselves. Some transit tariffs, again, are extremely rigid. Local tariffs, export tariffs, transit tariffs are approved by the supreme authorities; in France, for example, they are approved by the Minister of Public Works, are published, and are familiar to all. All may claim the benefit of them.

What are you doing when you attempt to prohibit private agreements? This is not at all the abolition of export tariffs or of transit tariffs; it is a totally different matter. What a railway administration is forbidden to do is to say to a consignor, "If you give us goods to forward, you shall have special privileges. I shall not apply to you in all its rigour the tariff which has been published and posted up". This is prohibited, and please notice that in France this provision is included in our own tariff scales. It was also prohibited at Bern. Why? Because we do not intend a railway administration to favour one manufacturer at the expense of another manufacturer of the same country. That is what is forbidden. That is what is meant by private agreements. In France we apply this provision with the utmost strictness. You have asked why France first of all accepted this proposal and now makes reservations? I will tell you the exact reason. At the end of January 1921 the railway administrations learned that other railway administrations were not interpreting as they did this article which you wish to introduce into the International Convention. Certain railway administrations are saying, "We are applying the provision which prohibits private agreements when we require a consignor to pay the charge laid down in this tariff", and they claim that at the end of a year they may grant certain bonuses and rebates to certain large consignors. You protest against this; you say it is not possible...

M. POLITIS (Greece, Rapporteur; speaking in French). — It *is* possible.

M. SIBILLE (France; speaking in French). — My dear sir, that is why we have changed. A letter was brought to us in January 1921. I have no wish to denounce any individual State here; I will merely read this letter and show you that what I tell you is the absolute truth. The letter reads as follows :

In order to enable you to forward your large traffic in metallurgical products on our line, we bring to your notice below the reduced prices which we are prepared to offer you by way of rebate for your consignments as from the 20th of the present month.

The letter adds :

Requests for rebates are to be addressed to our Rebate Department, together with the relevant transport documents, within a period of one year.

That is what happens, and we wish it to stop.

You spoke of M. Colson. I do not know whether M. Colson approved of this *Green Book* commentary...

M. POLITIS (Greece, Rapporteur; speaking in French). — It was he who prepared it.

M. SIBILLE (France; speaking in French). — ...but I do know that M. Colson, when he heard of the letter to which I have alluded, said to me, "Above all, my dear friend, do not sign any Convention, because this provision which it is intended to introduce into international law must be revised, and must not be inserted in any Convention signed at Barcelona. If it were, when we go to Bern or elsewhere to raise the same question, we shall be told that we were forestalled, as the question was settled at Barcelona. We should undoubtedly be told that the signature of France was written on a Convention which enacted that no alteration should be introduced into Article 11 of the Bern Convention, and we should be obliged to comply". We do not wish this argument to be brought up against us. We intend to reserve all freedom of action, and I am therefore authorised by my Government, which has consulted all competent men in France on the subject, to oppose most categorically the conclusion here of a Convention.

The idea expressed by the Rapporteur is a very good and clear one, and I approve it. Change your first three articles,—I accept them. My whole argument bears upon Article 4; as it contains contractual provisions, alter it. Say that it would be desirable for the contracting parties to adopt certain provisions and apply certain tariffs on their railway systems; we will agree, and there will be unanimity on the point. But we cannot go further, and I declare on my soul and conscience that if you were to decide otherwise, this Convention would not receive the approval of France, and in any case I should reserve the right to attack it in other quarters, as I have attacked it here.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation greatly regrets that it cannot share the view of the French Delegation. We maintained that in Articles 1, 2 and 3 of the *Green Book* Draft it was necessary to change the words *The High Contracting Parties agree to recognise as highly desirable,* and to say *undertake to adopt.* We are, therefore, only acting consistently when we, to our great regret, vote against the French proposal. We firmly believe that it would not be in keeping with the task which the League of Nations is now rightly undertaking throughout the world to transform into mere Recommendations a Convention which we prepared with so much trouble and care, under the auspices of the League of Nations. If we accepted the suggestion made to us by the French Delegation, would there not be reason to fear that the other Convention—that on Navigable Waterways—which has given rise to so much discussion, may share the same fate also and become in its turn a series of Recommendations? If that happened, what would remain of our work? In face of the problems which are vital to the revival of normal international life, we should be giving an impression of impotence which I think it would be undesirable to give, and we should be placing weapons in the hands of enemies of the League of Nations, enemies who, as our eminent Chairman said the other day, are always on the watch against it.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation took up a very definite attitude in the Committee which dealt with the Draft Convention on Railways. It considers that it is in the interests of South America that this Convention should be changed to a series of Recommendations, and in that it is in complete agreement with the views so clearly expressed by the Delegate of France. I regret to be obliged to return once again to a subject which was discussed at such length in Committee, but I must state that, as far as we are concerned, we laid stress on the fact that in South America railways are still in the period of construction, that

the regimes in the various countries differ very considerably, that as regards Chile, Brazil, Venezuela and Paraguay, for example, there is hardly any similarity between the laws. As regards the provisions of Article 5, although we apply within Brazil the whole of the principles laid down therein, I do not think that South America can adopt them in so categorical a form as is indicated here.

The Italian Delegate has alluded to the Convention on Navigable Waterways, and if I understood him aright he expressed the fear that that Convention may suffer the same fate as that now before us. I do not know whether this fear is well-founded. As regards navigable waterways, the problem is notably different; it deals with laws which were drawn up many years ago and which have merely to be rendered clearer and more uniform. Moreover, on this subject we had an important precedent, the Congress of Vienna.

As regards railways the matter is quite different. In Europe the regime of railways may be said to be in its maturity; in South America it is only in its infancy. Even on the question of tariffs there are considerable differences, both in theory and practice, not only as between one country and another, but between different parts of the same country. How could we accept so definite an obligation for a regime which is only at the beginning of its evolutionary process? For this reason, returning to the proposal which we made at the time when the Italian amendment to Article 1 was discussed, we consider that this Convention should logically be tranformed to Recommendations.

The Delegate of France has told us that his country, and probably the other countries also, could accept Article 4 if it were drafted in such a way as to possess clearly the character of Recommendations and not of an obligation. I entirely agree with him, and I would add that in this case logic itself bids us transform the Draft Convention into a series of Recommendations. A number of articles which, taken together, form nothing more than Recommendations, cannot be a contract, a formal engagement binding upon States, which it is customary to call a Convention. Articles 1, 2 and 3, and even 4, contain a series of Recommendations and desires, and we can reasonably accept these Recommendations and desires only in the form of an act entitled *Recommendations* and not *Convention*. I therefore ask the Conference, in conformity with the proposal submitted to the Committee during the discussion of Article 1, to change this Draft Convention to a series of Recommendations. This will in no way prejudge our attitude towards the Convention on Transit and the Convention on Navigable Waterways.

M. LANKAS (Czecho-Slovakia; speaking in French). — I regret that from the very beginning of the discussions on the Railways Convention I have been unable to share the view of the French Delegation, and in particular that of M. Sibille. I regret it even more to-day, when in the course of his brilliant speech he spoke so kindly of me. I must nevertheless engage in controversy with him, because I cannot possibly leave Barcelona with Recommendations in place of a Convention. I cannot understand why, in a practical sphere of such importance as that of international traffic, it is impossible to establish a Convention.

Before stating my arguments in favour of the Convention I think I must say a few words in reply to what was said by the French Delegate. My task will not be a very difficult one, because I do not think that he has adduced any arguments against the system of Conventions, especially in his first speech. In his second speech he attempted to prove the impossibility of making a Convention with the Treaty of Peace as a basis, Article 366 of which, he says, states that a Railway Convention must not be made because that article binds the contracting parties to adhere to the Bern Convention. This argument does not appear to me to be conclusive. As a matter of fact the Treaty of Peace and the Convention at Bern have nothing in common with the General Convention on Railways. It is therefore needless to put to us the question whether, in accordance with the terms of Article 366 of the Treaty of Peace, we should make a Convention or a Recommendation. The meaning of the Treaty of Peace is simply that the Convention of Bern, which has been denounced by France, must be renewed. I may add that the denunciation of the Bern Convention by France and certain other States has given rise to great difficulties. The authors of the Treaty, therefore, considered it necessary to say in Article 366 that the high Contracting Parties wished to renew

the Convention of Bern, and at the same time that Germany was obliged to adhere to the existing Bern Convention and to the Convention which would succeed it. But in these articles the Treaty in no way refers to a General Convention on Railways. If we conclude this Convention we shall not be contravening the terms of the Treaty of Peace. The French Delegation is confusing the General Convention with the Bern Convention; it forgets that the Bern Convention, though of great importance for international traffic, does not regulate more than a small portion of it,—the relations between the public and the railways as regards the obligation to carry, and also various relations regarding the financial side of appeals between railways in respect of through traffic. It does not regulate the international regime as a whole; in this respect it is inadequate, and it must be supplemented by other Conventions, in particular by Conventions regulating the technical operation of railways.

I now pass to the arguments drawn by M. Sibille from the clause of Article 4 on private agreements. At Paris we included this clause in the Draft Convention after having studied the Bern Convention. We thought that as this provision, which deals with equality of treatment between railway administrations and not between States, has been in force for fifty years, and as it has rendered valuable services and is generally recognised, it would be desirable to include it in our Convention. This clause concerning private agreements is, however, not the most important one. I have just discussed the matter with certain delegates, who assured me that they did not see any objection to removing it; in practice it would, perhaps, not be applicable throughout the world. We are not acquainted with American law, but Europe has no need of it, because this clause already exists in the Bern Convention. I do not know whether it could be applied in England, neither do I know whether American law does not prohibit certain secret agreements between railway administrations and consignors,—agreements concluded fraudulently, I may say. If a railway administration publishes tariffs and makes secret agreements applying other tariffs, it is committing an illegal act which is forbidden by every system of law. The provision which we recommend has no other aim than to apply to the whole world this rule which is laid down in the Bern Convention. The French Delegate pits against my argument a railway treaty concluded by Czecho-Slovakia with France. That concerns me particularly, because I was the author of that treaty from the first line to the last, and I was very happy to see it accepted without alteration by the French Government. It is a very harmless treaty, which states simply that until the Bern Convention is renewed it will be applied with the modifications rendered necessary by the difficulties of the post-war period. M. Sibille wonders why the Council of the League of Nations has invited us to make a Convention on Freedom of Transit, a Convention on Navigable Waterways, and, *if possible*, a Convention on Railways. I should be very grateful if those of you who were at Geneva would explain to me why the Council of the League of Nations added to this invitation, as regards railways, the words *if possible*.

M. Sibille has completely failed to convince me. Apart from this special agreement with which I am dealing, he has adduced no argument against the conclusion of a Convention on railways. He merely said that it would be wise for us to confine ourselves to Recommendations. Let me tell him that we came to Barcelona not to be wise, but to make Conventions. I hope that the majority of the Conference will adopt this form. M. Sibille also spoke of an international code. Our Convention never had any claim to be an international code. The international code will be established by the jurists of the Advisory Committee. What we are doing is to build a framework on which will be founded, through the action of the Advisory Committee, the international code referred to by M. Sibille. It would not even be possible for us to draw up an international railway code. M. Sibille invoked the *Green Book*, which speaks of special conventions between railway administrations. At the Paris Commission I consistently opposed the view that the special conventions referred to in Article 5 should be conventions between railway administrations. I always made it clear that the Special Conventions should be concluded not between railway administrations but between States, who should agree to invite their railway administrations to conform.

Again, M. Sibille has spoken of the revision of the Bern Convention. He said that we should not make a General Convention because there would be a Revisional Conference for the Bern Convention. I must repeat that the Bern Convention has, so to

speak, nothing to do with our Convention in the sense intended by M. Sibille. I consider that a Revisional Conference must be held as soon as possible, but the Convention which we shall conclude here will in no way prejudge the work of this Revisional Conference.

M. Sibille has pointed out that a certain number of States reserved the right to form their own railway tariff policy. He said that industries must be protected not by means of tariffs, but by the Customs regime. These are two opposite theories. I do not think that France has abandoned a tariff policy; I would not have it thought that we, who wish to include in the Convention a prohibition of private agreements, are desirous of carrying on a tariff policy in our own country by means of private agreements.

Allow me to dwell upon the necessity of concluding a Convention on railways. There is one point on which all will agree with us, namely, that international traffic must be facilitated by every possible means. We have met at an International Conference which, according to what we have been told of the spirit of Geneva, will probably not meet every year. Ought we not to utilise the present opportunity to do all in our power to facilitate international traffic? I think we are under obligation to do so. If we succeed in concluding a Convention, it will help to facilitate international traffic. There is only one argument which I admit against this Convention, namely, that it is not very elegant, and that therefore it has pleased hardly anybody. Why is it not elegant? Probably because a world-wide Convention could not possibly be made in a more developed form.

What does this Convention contain? In the first three articles it unfortunately contains recommendations. We, in common with the Italian Delegation, thought that it would be possible to undertake certain engagements. We were supported by the Delegate of Greece, who is now our esteemed Rapporteur, but the American States did not see their way to accept the obligatory form for these three articles, and the Committee realised that we should have to confine ourselves to expressing recommendations. These first three articles all deal with the technical measures to be taken with a view to facilitating international traffic,—the treatment of goods en route, transhipment, when this operation cannot be avoided—it being implied that this should be avoided whenever possible—the form of international tariffs and their application. The American States declared that in view of the laws of their countries, they could not accept an obligation; they could only accept a recommendation. That is what Article 2 says.

Articles 1 and 2 offer a certain analogy with the Bern Convention. They refer to the extension of the scope of the Bern Convention in order that the greatest possible number of States might become parties to it. That is the meaning of the words *subject whenever possible to the same obligation.*

Article 2 contains an important provision referring to the extension of the scope of the Bern Convention, not only as regards the number of States to adhere to it, but also as regards the matter itself; Article 2 implies a recommendation that a convention should be concluded on passenger and luggage traffic. The American States have also declared that they cannot accept Article 2 in an obligatory form, but they have accepted it in the form of a recommendation.

Article 3 deals with technical questions which—and I wish to emphasise this point—were not regulated by the Bern Convention on International Transport, but, as far as Europe was concerned, were regulated by the Bern Convention on Technical Unity, which is not the Convention referred to by the French Delegate. In our opinion Article 3 might, particularly as regards contiguous territories, assume an obligatory form; but we withdrew our amendment, and we subscribed to this article as drafted in the *Green Book.* The Delegations of the South American countries accepted it in the form of a recommendation.

As regards Article 4 (now Article 5) I had hoped that the first part of this article, which is obligatory in form, might be accepted in that form by the American States. The Brazilian Delegate gave us to understand that he desired the general application of the principle of equality, even as regards a through journey. I hoped, then, that the principle of equality of treatment as regards tariffs—an equality which, as it would be applied under Article 5, would be very restricted—might be applied in America,

and that it would not be in conflict with any institutions or laws because it merely states that no distinction must be made based upon nationality. We were unable to agree to the extension of this principle; in conformity with the proposal of the British Delegation, we left it in the *Green Book* form. I repeat that I believe that this principle could be accepted without difficulty by the delegations of the South American countries. Finally there is the last sentence of the first paragraph, which speaks of *any private agreement having as its object the granting of rebates to one or several passengers, or to one or several consignors...* I think that this clause is applied both in England and America, and that private agreements which are at variance with duly published tariffs are forbidden. I should like to remove one ambiguity. It is not duly published bonuses which are forbidden; duly published rebates are allowed even when such rebates can in practice only be applied in favour of certain classes of consignors or even to a single consignor. What is forbidden is tariffs which would be in force for any one firm or group of firms, but I think that treaties clandestinely concluded between railway companies and consignors are forbidden in Europe as well as in England and America.

I now come to Article 4 (formerly Article 5), which in my view is the most important one. It is the article which speaks of Special Conventions. Articles 1, 2 and 3 cannot be applied in America, but can in Europe. If we desire so strongly to keep the word Convention, it is because we wish through this Convention to impose on all States the obligation to conclude in future special conventions in respect of groups of contiguous territories applying the principle of Articles 1, 2 and 3. It is not stated to what extent this obligation should exist, but I think that what it means is that it should be applied as far as is possible. We are thus under obligation to make regional conventions, European Conventions—in the case which I have in mind—to regulate the railway question. This for me is the most important point, and it is Article 5 which must form the nucleus of future railway conventions. It is for the sake of this article that it is essential to keep our work in the form of a Convention, and not to remain content with *recommendations*. Moreover, in Sub-Committee the Brazilian Delegate spoke not of a *vœu* but of recommendations, in the sense of Article 405.

M. SIBILLE (France; speaking in French). — No, no.

M. LANKAS (Czecho-Slovakia; speaking in French). — Taken in this sense, this recommendation is fully as binding as a Convention, and we should perhaps be satisfied if this Convention were to be in the form of a Recommendation as laid down in Article 405 in the Treaty of Versailles, which deals with the organisation of labour. But I think that will be impossible,—everything would have to be done over again. I will conclude my remarks, which have already, I am afraid, lasted too long, by again asking you to leave this unoffending and harmless Convention in the form of a Convention.

M. CARLIN (Switzerland; speaking in French). — I have listened with great attention and interest to the arguments for and against the proposal of the French Delegation, and I have been wondering the whole time whether there may not be any means of finding some common ground of understanding on the following lines : the title of Convention would be maintained in order that those of us who wished to return home with a document bearing the title of Convention should be satisfied. On the other hand, and in order to balance this concession on the part of the French Delegation, we should use in Article 5 the formula *highly desirable* which has been used in the other articles. That is my proposal, which I make with the desire that, if possible, an understanding should be arrived at and a unanimous vote secured.

The PRESIDENT. — If I understand aright, M. Carlin proposes a compromise, as regards form, which would consist in giving Article 5 a text similar to that of Article 1, that is to say : *The States consider as highly desirable.* The text as a whole, thus modified, would assume the character of a series of Recommendations (we must speak of things as they are) but would retain the title of a Convention; this would have the effect of linking it up with the body of the work which we are doing, while at the same time reducing it one stage lower as regards sanctions. However, a Recommendation is

not a document to be despised, and moreover this decision would be in conformity with the instructions of the Council, and also with the conditions under which we were summoned; the word *recommendation*, in fact, actually occurs in the Geneva resolution upon which our work is based.

M. LANKAS (Czecho-Slovakia; speaking in French). — You say that this decision would be in conformity with the invitation which was sent to us, but would this Recommendation be of the same character as that referred to in Article 405?

The PRESIDENT (speaking in French). — In the first place I did not use the word *invitation*; I would not have ventured to say that the Council *invited the Conference*. I said that in the text in accordance with which we are constituted, the word *recommendation* was used to mean a possible result of the deliberations of this Conference.

M. LANKAS (Czecho-Slovakia; speaking in French). — But is this Recommendation of the same character as that in Article 405 of the Treaty of Versailles?

M. SIBILLE (France; speaking in French). — Article 405 refers to something entirely different. It refers to the organisation of labour.

M. LANKAS (Czecho-Slovakia; speaking in French). — The word *Recommendation* is new; it is an innovation of the Treaty of Peace, and I think it will produce effects which will be international.

The PRESIDENT (speaking in French). — That is not the point. I simply referred to the text of Resolution *c*) of the Assembly relating to the organisation of Communications and Transit. It states... (2) *determine under the same conditions whether the measures which it elaborates shall take the form of... or of recommendations...*

M. LANKAS (Czecho-Slovakia; speaking in French). — An analogy has always been established between the work of Labour and ours. I do not see why the Recommendation should not be of the character which it possesses in Article 405. I would remind you that the Brazilian Delegate expressly states that he proposed to give the Convention the form of a recommendation in the sense of Article 405.

The PRESIDENT (speaking in French). — That is not what we are discussing. We are discussing a proposal by M. Carlin that the new Article 5 should be modified in such a way that its text should include the words *highly desirable*, as does Article 1.

M. LANKAS (Czecho-Slovakia; speaking in French). — I accept that.

M. CARLIN (Switzerland; speaking in French). — In the discussion which has arisen I am afraid that there has been a misunderstanding in connection with my proposal. I thought I had made it quite explicit, but there would perhaps be no objection to my repeating it. It is inspired solely by a spirit of conciliation, and is to the following effect : the text which we are now discussing to retain its title of Convention, if the French Delegation agrees, but the Conference to make the concession to that delegation that Article 5 (formerly Article 4) would be drafted in the form of a *vœu*, as are Articles 1 to 3. That is a clear statement of my proposal, and I repeat it because the President did not make clear the new wording of the former Article 4, whereas I link the two things closely.

The PRESIDENT (speaking in French). — Does M. Sibille agree to retain the title?

M. SIBILLE (France; speaking in French). — It must be quite clear that we are only making Recommendations, and that there is no obligation.

The PRESIDENT (speaking in French). — The question must be clearly stated. M. Carlin proposes, for the sake of conciliation, that on the one hand the Draft should

keep its title of *Convention*, and that therefore it should be a Convention; and that, on the other hand, Article 3 (formerly Article 4) should be drafted in the form of a *vœu*.

M. CARLIN (Switzerland; speaking in French). — Exactly.

The PRESIDENT (speaking in French). — These provisions as a whole would then constitute no hing more than a collection of Recommendations. The question is whether, from the point of view of the consistency of our work, this does not involve a series of consequences which might induce certain of us who are well disposed, to regard this text as possible. I should therefore characterise this proposal as—what it really is—a conciliatory proposal, and I will say no more.

M. NEUJEAN (Belgium; speaking in French). — I was very greatly impressed, and my faith was almost shaken at one moment, by M. Sibille's speech. No-one has greater authority than he to speak as he has done. Moreover, as this is a question of the French Delegation, the delegation of that great country which we love with all our heart, I also should like to find some method of conciliation, and I should like to fall in with M. Carlin's views. But frankly I hesitate to do so. M. Carlin, whose spirit of conciliation I appreciate, has said that those who desire a Convention will return home with a Convention. But we must also admit that those who have sent us here have some intelligence and judgment. When they read our Convention they will see in Article 1... *recognise as highly desirable...*; in Article 2... *recognise as highly desirable...*; in Article 3... *recognise as highly desirable...*; in Article 4... *recognise as highly desirable...*; in Article 5... *as far as possible...*; in Article 6... *recognise as highly desirable...*; Can we make them believe that they have a Convention before them? Let us be reasonable, and let us not deceive ourselves; that is not a Convention.

If we wish for a measure of conciliation—and whatever my feeling is, I incline in this direction—let us leave Article 4 as it is—it cannot be a great objection in M. Sibille's eyes—in fact, in his second speech he put forward an argument to this effect—by saying that his very object was equality of treatment. He wishes this Article 4 to be a minimum with more rigorous sanctions than the next Bern Convention. Let us keep Article 4 as it is, and, in order to make a concession to the French Delegation, let us entitle the text *Recommendations* instead of *Convention*. I should prefer that. If we did so we shall at least be logical, and it would be a conciliatory course to take. But do not let us speak of a *Convention* when our six articles are in actual fact *Recommendations*. This appears to me impossible, however desirous I may be of satisfying the French Delegation. I therefore appeal to all to ask for this concession, and to use the term *Recommendations on the International Regime of Railways*. The President, with his high authority, has shown that Recommendations are one of the forms provided for in the texts which serve as our mandate. Let us therefore use this form, and we shall be logical.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would simply observe that, when I said that I accepted M. Carlin's proposal, it was because he says that the article concerning tariffs ought to be cited in the article dealing with special Conventions. We ought, therefore, either to make Article 4 follow Article 5, or we should insert in Article 4 (formerly Article 5) the words *in the absence of any Convention providing for the application of the principles laid down in Articles 1, 2 and 3 of the present regulations, special Conventions shall provide for...*

I take advantage of the present opportunity to say that I very greatly regret my inability to accept the amendment of the Belgian Delegate, as this amendment changes the character of the Convention.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In a spirit of conciliation, which I am the first to recognise, the Swiss Delegate has made a proposal which, if I rightly understand it, is to convert the railway clauses into *Recommendations*, but still to call them a *Convention*. I do not think we shall make progress in this direction. Perhaps it is one of our national characteristics to value the substance much more than the form; but I do think that any instrument on which we agree ought to have the title

which rightly corresponds to its contents. If there are obligations, let us call it a Convention. If there are no obligations, let us call it a Recommendation. But do not let us deceive ourselves by terming a Convention what is really not a Convention at all. Therefore, I still think that the question lies between the advocates of a Convention and the advocates of Recommendations. I should like to say at the outset that it would be a matter of very great regret to the British Delegation, as also to many other delegations here, if all the efforts which have been made at the present Conference to come to an agreement with regard to the international regime of railways should result in nothing but a set of Recommendations. I am bound to add that, much as I appreciate the skill and ability shown in M. Sibille's speech, I was not convinced by any of his arguments that this course is either necessary or desirable. But while I was certainly not convinced by the arugments used (which I think could all be answered), I was greatly struck by the fact, which must be evident to everyone who listened to M. Sibille, that, for some reason, which to the French Government evidently appears conclusive, the French Delegation is unable to give its adherence to a Railway Convention concluded at Barcelona. That is the fact which we have to face. The discussion has shown that at least one delegation follows France, and that certain other States—how many we do not know—will be actuated by some reason which no doubt appears to each to have great weight; and so, in the fifth week of our Conference, within, as we all hope, a few days of our departure from Barcelona, we are faced by the extremely unwelcome choice between taking our chance of a convention, which even its most ardent advocates would hardly say is a very satisfactory document, and which we now know will at best only be adopted by a majority, and a Recommendation, which, though of much less value, can at least, I hope, be unanimous. The gist of the matter is the value which we attach to unanimity as compared with a division in our ranks. I attach very great value to unanimity, and in these circumstances the question, and the only question I ask myself is, whether there is any value at all in a Recommendation? We have considered that question at length and in detail amongst ourselves, and, on the whole, the conclusion of the British Delegation is that Recommendations on international railways would be slightly better than nothing at all. In these circumstances, though with great regret, the best advice that I can give to the Conference is to waste no more time, but to ask the Drafting Committee at once to transform such of the articles of this Draft Convention as lend themselves to the process, into the form of a Recommendation, which we can then accept or reject. Then let us turn to a more useful and fruitful part of the business which we are here in Barcelona to transact.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot possibly accept the Recommendations for the Regime of Railways. I very greatly regret that I am obliged to make this statement. I consider that there is one article of very great importance in the Treaty of Versailles,—Article 379. I will not dwell upon this further, but, basing myself on this article, I say that a General Convention on the International Regime of Railways must be established. I must have a Convention, even if it contains nothing more than Article 5, which refers to the conclusion of Special Conventions. I think that according to M. Carlin's proposal we may without difficulty conclude a General Convention which will contain a series of *vœux*, but which, in Article 5, will establish an obligation to conclude special conventions putting into practice the *vœux* formulated in the other articles. I again wish to express the regret that I feel in not seeing my way to accept a compromise, and I make every reservation as regards signing Recommendations.

The PRESIDENT (speaking in French). — It is growing late. I think there would be no objection to referring this debate to the Railways Committee. As the British Delegate observed, we cannot, I think, vote on the text, because, if we are to make Recommendations, the text must be changed and be given that form. There is also M. Carlin's amendment, which I cannot drop on my own authority. I think that the Committee might be asked to meet to consider it, and possibly to change the text of the Convention into Recommendations. Let the question be referred to the Railways Committee, or to the Drafting Committee; but in any case the change must be made. It is a practical impossibility to draw up a text in plenary meeting. The Railways

Committee is competent, and is thoroughly acquainted with the subject. I propose to entrust it with the task of making the necessary change and considering M. Carlin's amendment. It will set aside this amendment if it so desires; if, on the other hand, it thinks that it should be kept, it will do so.

M. SCASSI (Greece; speaking in French). — I think that the proposal to refer the whole Draft to the Drafting Committee would not have the effect of shortening the discussion, but would, on the contrary, prolong it. The question of principle remains untouched, and it is the Conference alone in plenary meeting which is qualified to settle it. I propose, therefore, that a vote be taken at once on the question of principle. In my view this would be the most practical method of shortening the debate. There is no occasion either, I think, to refer M. Carlin's amendment to the Railways Committee. I do not see the use of doing so. I fully appreciate the spirit of conciliation which dictated it, and I realise my Swiss colleague's intention; his proposal, will he allow me to tell him, would be equivalent to saying that the cowl makes the monk. We should be drafting a series of Recommendations, which we should afterwards baptise with the name of a *Convention*. Of course we should not keep this work to ourselves; it would be published. I think that would be absolutely impossible, and I therefore propose that the question of principle be put to the vote.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I was about to make the same proposal as that of the Greek Delegate. I think that a vote on principle would be enough. We must settle the question whether we are dealing with a Convention or with Recommendations. We will then vote on the Swiss amendment.

The PRESIDENT (speaking in French). — I think we must vote on the amendment first. M. Carlin has not withdrawn it, and I cannot possibly eliminate an amendment.

M. BIGNAMI (Italy; speaking in French). — We have come to a moment which I think is a very difficult one for the League of Nations. Let us be candid and confess that it has been dealt a serious blow. What we are about to propose to our respective Parliaments is something which will lead each of the Members of those Parliaments to wonder whether it is worth expending so much money on the League of Nations if we are only to achieve results such as this. I consider that a vote must be taken on the proposal which is furthest from that before us, that is to say, on that of the French Delegation, which consists in giving the name of Recommendations to the Convention which has been submitted to us.

The PRESIDENT (speaking in French). — Both views may be upheld. I do not press my own. As a rule a vote is taken on amendments, but it is clear that, logically, as the proposal of the French Delegation is furthest from the proposal of the Committee, the other view may also be upheld. If the Conference decides to vote now, we will put to the vote the proposal of the French Delegation, and I will ask M. Sibille to indicate to us exactly the form which is to be given to it.

M. SIBILLE (France; speaking in French). — I think that my amendment might be submitted in the following form :

All the provisions with regard to the International Regime of Railways shall be submitted in the form of Recommendations.

I do not ask for any change in the first three articles.

M. LANKAS (Czecho-Slovakia; speaking in French). — Are there any changes in Articles 4 and 5?

The PRESIDENT (speaking in French). — There is no question of that now. The whole text of the Draft Convention is accepted, and what is asked is whether it shall be changed into Recommendations as it stands.

M. SIBILLE (France; speaking in French). — I ask that all the provisions submitted to us shall be referred either to the Railways Committee or to the Drafting Committee, in order to be put in the form of Recommendations.

M. LANKAS (Czecho-Slovakia; speaking in French). — That is an answer to my question. I am now enlightened on the point.

The PRESIDENT (speaking in French). — The Conference now has to decide whether it wishes the Draft to be referred to the Drafting Committee or to the Railways Committee in order to be transformed into a series of Recommendations.

M. SIBILLE (France; speaking in French). — I think that we may at once agree te refer it to the Drafting Committee; as the Railways Committee has given its decision on all the provisions, there is no longer any question but of adjusting the wording. The Drafting Committee is better qualified to do that than the Railways Committee.

The PRESIDENT (speaking in French). — We will consult the Conference, then, as to the following formula, which appears to me to be most exact :

> The French Delegation proposes that the texts submitted to the Conference by the Committee on Railways be referred to the Drafting Committee in order to be transformed to a series of Recommendations.

M. SIBILLE (France; speaking in French). — Exactly.

M. CARACOSTEA (Roumania; speaking in French). — Of course there will be no fundamental change.

The PRESIDENT (speaking in French). — The Drafting Committee will modify the form of the text in order to turn it into Recommendations.

M. BIGNAMI (Italy; speaking in French). — I ask for the vote to be taken by roll-call.

M. LANKAS (Czecho-Slovakia; speaking in French). — I make the same request.

The PRESIDENT (speaking in French). — Two requests for a roll-call have been put to me, one from M. Bignami, Delegate of Italy, the other from M. Lankas, Delegate of Czecho-Slovakia. We will now take a vote by roll-call. The members will answer yes or no according to whether they accept or reject the proposal of the French Delegation.

Albania	No	Greece	No
Austria	Yes	Guatemala	Yes
Belgium	Abstention	Haiti	Yes
Bolivia	Yes	Honduras	Yes
Brazil	Yes	India	Abstention
Bulgaria	No	Italy	No
Chile	Yes	Japan	Abstention
China	Yes	Latvia	No
Colombia	Absent	Lithuania	Abstention
Costa Rica	Absent	Luxemburg	Absent
Cuba	Yes	Netherlands	No
Czecho-Slovakia	No	Norway	No
Denmark	No	Panama	Yes
Esthonia	No	Paraguay	Absent
Finland	Absent	Persia	Yes
France	Yes	Poland	Yes
Great Britain	Abstention	Portugal	Absent

Roumania	Yes	Switzerland	No
Serb-Croat-Slovene State	Yes	Uruguay	Absent
Spain	Yes	Venezuela	Absent
Sweden	No		

The result of the vote by roll-call is therefore :

Yes	16
No	12
Abstentions	5
Absent	8

M. POLITIS (Greece, Rapporteur; speaking in French). — As a two-thirds majority has not been obtained, the proposal of the French Delegation cannot be adopted.

M. WINIARSKI (Poland; speaking in French). — Could not those States which were absent when the roll-call was taken give their vote later?

The PRESIDENT (speaking in French). — That is impossible. It has been possible to do it in respect of questions which have not given rise to discussion, but as there has been opposition, States absent at the time when the roll-call was taken cannot now vote.

M. SCASSI (Greece; speaking in French). — Then what is the result from the vote?

The PRESIDENT (speaking in French). — I ask the Conference to authorise the Officers of the Conference to postpone the announcement of the vote until to-morrow, in order that they may consult the Rapporteur for the Rules of Procedure, M. Ferraris, who is not here at the moment. The vote will therefore be registered as it stands, and the announcement of it will be made to-morrow, after consultation has been taken with the Rapporteur for the Rules of Procedure, who will inform us of the exact significance of this vote.

The meeting adjourned at 8.25 p.m.

TWENTY-FIFTH MEETING OF THE CONFERENCE

(Thursday, April 14th, 1921, at 4 p.m.).

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS (contd.)

The meeting opened with M. Hanotaux, President, in the Chair.

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS (contd.)

The PRESIDENT (speaking in French). — Following upon the vote of yesterday evening, the significance of which the Conference was unable to determine, we consulted personally the Chairman of the Jurists' Committee, Sir Cecil Hurst. I call upon him to address the meeting.

Sir Cecil HURST (Great Britain, Chairman of the Jurists Committee; speaking in French). — I can only give you my personal opinion; the Jurists' Committee has not been apprised of the question and has not considered it. As I was absent at yesterday's meeting, I referred to the record of the meeting, and on reading it I found that it was extremely difficult to determine the exact significance of the vote taken by the Conference. You are aware of the terms of the Rules of Procedure and of the Scheme of Organisation. Certain questions require a two-thirds majority, and certain others an absolute majority, while for others again a simple majority is sufficient. In what category must yesterday's vote be placed? As a jurist, I candidly confess that I find it very difficult to give an exact answer. If those who voted yesterday thought that it was merely a matter of referring a question to the Drafting Committee with a view to preparing a new text, a simple majority would have been sufficient. If, on the other hand, the Conference considered that it was taking a decision on the question of the form to be given to these articles, a two-thirds majority was necessary. But I repeat that from an analysis of the discussion it is very difficult to be sure of the intentions of the Conference, and I hope that the Jurists' Committee will not have this task placed upon them.

The PRESIDENT (speaking in French). — The Drafting Committee found itself in the same difficulty as the Jurists. This difficulty, moreover, is a general one; the two cases defined by Sir Cecil Hurst were both stated before the vote was taken. As a result, everyone interpreted the vote as he pleased, according to his own opinion. In these circumstances, with a view to avoiding a difference of opinion in the Conference, and in order to secure a unanimous vote, the Officers of the Conference have considered it their duty to make an appeal to the Conference for agreement, and respectfully to submit to it a proposal with the object of combining the two cases before it. I will read this proposal :

Pending the conclusion of a General Convention concerning railways, the Conference has adopted the following articles as Recommendations.

This text may help us to find a way out of a situation from which there seemed no escape, and may enable us to arrive at as satisfactory a result as possible.

M. LANKAS (Czecho-Slovakia; speaking in French). — There is no doubt whatever. We voted yesterday on the principle of the question. I myself strongly urged that the situation should be made clear, and that we should ascertain whether we were voting on a mere question of a reference to a Committee or to the Drafting Committee, or whether we were voting on the principle, that is to say, on the question whether the whole Convention should be changed into Recommendations or not. I have no doubt that a two-thirds majority was necessary; we were dealing with the main question,—a question of principle, an important question. I cannot accept the formula proposed by the Officers of the Conference; the word *pending* would never be anything more than a word, we should certainly have to wait more than three and a half years, and in the meantime the five years provided for by Article 379 of the Treaty of Versailles would expire.

As regards the principle of the question, may I say that the formula which I think would secure if, not unanimous acceptance, at least acceptance by a large number of delegations, is the formula proposed by M. Carlin. The only objection raised to it is that we should thus have a Convention containing four Recommendations. But that would at any rate be something, seeing that this Convention is to be a world-Convention and that we must repair the error of the authors of Articles 379 of the Treaty of Peace, without considering that it would be very difficult to make a General Railway Convention which could be a world-Convention. If this Convention is to have a world-wide scope, I consider that we can only have Recommendations in these four articles, but in the article dealing with Special Conventions, which says that States are obliged to conclude regional Conventions, it should be otherwise. Indeed, the most important point in our text seems to me to be this article which deals with Conventions and which ensures the application to contiguous territories of the principles laid down in Articles 1 to 4. These principles, expressed in the form of Recommendations, cannot at present be applied throughout the world, but they may quite well be made the subject, as far as possible, of Special Conventions relating to contiguous territories,—in Europe, for example. I think, therefore, it is quite possible to make a Convention containing these most important Recommendations and this article as well.

I must say that, with the best will in the world, I cannot understand why the French Delegation still opposes it. If I understood M. Sibille aright, his principal objection is to Article 4 in its obligatory form. If a mere Recommendation were expressed in the article referring to tariffs, I cannot see why the French Delegation should object to it, and I venture to express the hope that the French Government, which had no intention of signing here at Barcelona either a Convention or a Recommendation, would, if this were done, adopt this standpoint. I would urgently beg you, then, to consider M. Carlin's proposal again, and to vote for it. It consists in changing the article dealing with tariffs to a simple Recommendation, mentioning the article on tariffs in the article referring to Special Conventions. This is the only solution I could accept, and I must state that our delegation, which was given instructions to sign a Convention, could not accept Recommendations. I therefore propose to the Conference to accept the suggestion made by M. Carlin.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation is ready to accept a compromise, as it is convinced of the desirability for a Conference such as this to vote unanimously, or almost so, whenever possible. But the Italian Delegation must make a few observations. In the first place Sir Cecil Hurst's speech is the best possible proof of the necessity of making some change in the Rules which we have laid down. If the Rules of Procedure cannot be brought into accord with the Scheme of Organisation, if we find, on the first occasion when it has to be applied, that it is inapplicable, some part of it must be changed.

The PRESIDENT (speaking in French). — There was some misunderstanding as to the manner in which the vote was put. I ought to have said : It is clearly understood that this is a vote on principle, or that it is a vote on form.

The mistake does not lie in the Rules, but in the manner in which I stated the question. I hope you will pardon my lack of experience and my failure to make the distinction clear. The mistake was due to that, and not to the Rules, the application of which is quite clear when the question is properly put.

M. BIGNAMI (Italy; speaking in French). — The President is attempting to take upon his own shoulders the blame for a mistake for which he was in no way responsible. This was plainly a vote on principle, and I fail to see the distinction drawn by the Jurists' Committee. However, I do not press the point, as the President thinks that it was he who should have put the question differently, and I return to the point which concerns us now.

I think that we can accept the proposal of the Officers of the Conference, but we must fix a date. What does *pending* mean? A recommendation such as this would indeed be far too indefinite. Problems such as those of railways and navigable waterways are positive ones, and I cannot understand there being any question of Recommendations in respect of them. We must remember that each of us, on behalf of the State which he represents, has made sacrifices. Each State has sacrificed part of its liberty. If we make Recommendations, what will be their value? I see none. A State may be prepared to apply a Convention and may not be prepared to accept a Recommendation, because the form *Convention* implies an obligation on the co-contracting States who accept reciprocal obligations. But what does the form *Recommendation* mean? Very little; a State cannot renounce anything unless other States also make renunciations as the equivalent which the first State is entitled to demand. It is clear that no-one will make sacrifices without being sure that similar sacrifices will be made on the other side. For this reason I think it is desirable to fix a period—a year or two years perhaps, but not longer—within which another Conference must be held. We should thus have a concrete formula on which we could vote. The other formula would be nothing but a futile recommendation, because it would have no absolute value for the various nations. If we accepted it, we should be doing something of very little practical use. That is the proposal which I venture to make, and which I hope the Officers of the Conference and the meeting will accept.

M. SIBILLE (France; speaking in French). — Two opposing cases were put and argued before the Conference yesterday. Some of us—myself amongst the number—maintained that we should confine ourselves to making Recommendations; others maintained that it was a Draft Convention which was called for. Then the Swiss Delegate, M. Carlin, submitted a proposed compromise. This proposed compromise, to which M. Lankas wishes to return, was opposed by the Delegate of Greece in terms which I think I should bring to your notice (1).

There is no occasion either, I think, to refer M. Carlin's amendment to the Railways Committee. I do not see the use of doing so. I fully appreciate the spirit of conciliation which dictated it, and I realise my Swiss colleague's intention; but his proposal, will he allow me to tell him, would be equivalent to saying that the cowl makes the monk. We should be drafting a series of Recommendations, which we should afterwards baptise with the name of a *Convention*. Of course we should not keep this work to ourselves; it would be published. I think that would be absolutely impossible, and I therefore propose that the question of principle be put to the vote.

The meeting then showed its approval of this in different ways. Why? Because the representative of Greece was supported by the advocates of both causes. And as M. Lankas has said, a vote was taken, as the Greek Delegate proposed, on the question of principle. What was the result of the vote? For the proposal to change all the provisions into Recommendations, sixteen votes; against, twelve votes; abstentions, five. Thus, as you see, there was a sufficiently large majority in favour of the change to Recommendations.

The Officers of the Conference did not see fit to announce the result of the vote. Why? Because the Rapporteur then said, "There is no need for an absolute majority;

(1) See p. 131.

what is needed is a two-thirds majority." Gentlemen, it is for the Officers of the Conference to settle the question, and I consider that I need not argue it further before this meeting.

What is the result of the vote taken yesterday? The result, it must be confessed, is that there is no large majority in favour of either system. We must reach an understanding. Very well; it is for the Officers of the Conference, who direct our debates, to find a formula which can be accepted by a large majority of the Conference, if not unanimously. This formula has been submitted to you, and for my part I accept it, in a broad conciliatory spirit. I notice that M. Lankas does not accept it. Well then,—I am more open to conciliation than he. I accept the compromise proposed by the Officers of the Conference, and let me tell you that I shall thereby find myself in agreement with the Delegate of Italy, who was yesterday amongst my contradictors and adversaries.

The Italian Delegate made one observation, the fairness of which I cannot but acknowledge; he said, "You speak of a Convention to be made within an indefinite period". In my view the Italian Delegate was right in saying that more precision is necessary, that it must be stated that the Convention shall be made within the period of one or two years. I think that the period should be fixed at two years. I am convinced that within two years, and perhaps within one, we shall be in a position to prepare this great General Convention on Railways which we all desire. Why? Because in a year's time the revision of the Bern Convention of which I spoke yesterday will probably have been begun. Belgium has already completed her work of revision of this Convention. I think that Italy also has terminated her labours. I may add that we shall shortly finish it in France too. We have already terminated our study of the Convention on the Transport of Passengers and Luggage. We are at present in course of considering the Convention on the Transport of Goods, and I think that, I will not even say in a few months, but in a few weeks, we shall have drafts which we shall be able to submit, in accordance with custom and tradition, to the International Railway Office. Then we shall be able to meet at Bern.

I therefore accept the proposal submitted by the Officers of the Conference, with the amendment proposed by the Italian Delegate. You will see that I am acting here in a broad spirit of conciliation, and this proves that I am amongst those who desire an agreement to be arrived at by a large majority, for do not forget that we must have a two-thirds majority. Yesterday I think it was not necessary; but at the last, for the final vote, a two-thirds majority must be obtained. You who are submitting a Draft Convention cannot hope to obtain two-thirds of the votes, since yesterday you could not even obtain a relative majority. Why not then be wise and give your support to the plan proposed by the Officers of the Conference,—a plan which has been made in a broad spirit of conciliation and which I, for my part, accept, I repeat, together with the amendment of one who yesterday was my opponent,—the amendment of the Italian Delegate?

M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me first of all to assure the Delegate of France that if I were in his place I should be as disposed to conciliation as he is. The formula which has been proposed is his formula. I think that it needs very rosy optimism to hope that in a year or even two years' time we shall be able to adopt a General Convention on Railways which is to be better than that which we are considering to-day. I do not share that optimism, and I think that when you have read the complete record of yesterday's meeting the optimism which you evince will depart; if ever anything resembling a General Convention on Railways could have been adopted, it would have been at that meeting. For my part I very strongly doubt whether we can be called together in two years, and I therefore cannot see any possibility of concluding a fresh Convention within that period.

I would venture to point out to M. Sibille that in my view there is no connection whatever between the Revisional Conference of Bern and our General Convention. I beg M. Sibille's pardon, but I think he continually confuses the Bern Convention with the General Convention.

When I examine the Italian proposal I ask myself what it means. What will happen at the end of two years? If I have understood aright, our Convention will

take the provisional form of Recommendations during that period. When the period has expired, will the Recommendations automatically change to a Convention, or must the Council of the League of Nations summon another General Conference, which will have the task of concluding a Convention on Railways? I do not understand the purport of this proposal, and even if I did, not being an optimist, I greatly regret that I could not support it.

The PRESIDENT (speaking in French). — If we drew up as a text the ideas expressed by M. Bignami and M. Sibille, a wording something like the following might be submitted to the meeting :—

It being understood that the General Convention or Conventions on Railways will be concluded within a period not exceeding two years, the Conference adopted the following articles as Recommendations.

If this text, which is purely provisional, meets the views of those who have expressed their opinion, we might, as we are attempting a compromise, put it to the vote. It would thus become a proposal of the Officers of the Conference, to whom the question was referred.

M. ORTUÑO (Spain; speaking in French). — I should like to know what body will draft this Convention—a new Conference, or the Advisory and Technical Committee?

The PRESIDENT (speaking in French). — I do not think it is possible to prepare a Convention when only twelve votes have been cast in favour of this proceeding. We can only tell the States that a Convention must be drawn up within a period of two years. As to who is to draw it up, that question depends on the relations between the technical organisations and the Council of the League of Nations. That is the answer to M. Ortuño's question.

M. ORTUÑO (Spain; speaking in French). — Then is our Conference expressing a *vœu?*

The PRESIDENT (speaking in French). — It is more than a *vœu.* After having left the Barcelona Conference, we shall all bring to the notice either of the Council or of our respective Governments the fact that our Conference could not agree upon a text except on condition that one or more Railway Conventions should be prepared within a certain period. Accordingly preparations will be made to draw up the Convention or Conventions within the period fixed. Of course no State can be forced to sign a Convention if it does not desire to do so. No-one under the sun can be coerced.

M. ORTUÑO (Spain; speaking in French). — Of course not. According to what the President has said, it would appear that if the desire, the recommendation, the wish of this Conference is that within a period of two years a Convention shall be made, will the body appointed to draw up this Convention be a fresh Conference?

The PRESIDENT (speaking in French). — Obviously.

M. ORTUÑO (Spain; speaking in French). — ... that is to say we must fix a period within which a fresh Conference must be held...

The PRESIDENT (speaking in French). — Exactly, in so far as the body of organisations concerned consider that they should do so.

M. ORTUÑO (Spain; speaking in French). — We shall say that in a period not exceeding two years a fresh Conference must be held.

VARIOUS DELEGATES. — Yes, Yes!

The PRESIDENT (speaking in French). — After having considered the formula proposed by M. Ortuño, the Delegate of Spain, the Officers of the Conference consider that there is no difficulty in making a Recommendation regarding the preparation and conclusion of a new Convention on Railways. We might express the proposed Recommendation in the following terms :—

It being understood that the Conference recommends that a new Conference shall be held within a period of two years in order to draw up a new Convention on Railways.

M. CARLIN (Switzerland; speaking in French). — I, too, appreciate the difficulty expressed by the Delegate of Spain. We must remember that we have before us a compromise proposed by the Officers of the Conference. This proposed compromise was amended by the Italian Delegation, and the French Delegate accepted this amendment, which was to the effect that a period should be fixed within which a new Conference should be summoned to prepare a Convention based upon the Recommendations which we are about to adopt. Before the vote is taken, however, I should like to draw the attention of the Conference to the fact that the stating of this period has no practical value; it is not for the Conference to say that a fresh Conference shall be held within a period of two years, for example, in order to transform into a Convention the Recommendations which will appear amongst the Acts of the present Conference. A new Conference can only be summoned by the Council, and we have no hold over the Council. We can of course make a recommendation, and if you think that is enough, you are free to do so, but I considered it was my duty to remind you that it is nothing more than a Recommendation, and that there does not ensue from it any obligation whatever to summon another Conference.

I should have preferred not to press the amendment which I submitted yesterday, and I am fully aware of the logical and legal objections which may be made to it, although in my view a convention can contain recommendations; it is possible, in fact, to agree to make certain recommendations, and there you have a "convention". However, I should not have insisted, but as the Delegate of Czecho-Slovakia has again taken up my amendment, I thought I ought to remind you of this. The proposal which the Officers of the Conference make to us takes into account the amendment of the Italian Delegation, but seems to me to be open to the very serious objection that it does not create any kind of obligation. We are indeed not competent to compel the summoning of a new Conference in order to make a new Convention. It was to this point that I considered I should more particularly draw the attention of the meeting.

The PRESIDENT (speaking in French). — In reply to the statement of the Swiss Delegate, may I be permitted to point out that a minority of twelve votes does not suffice for the making of a Convention, when sixteen votes have been cast against such a proceding? M. Carlin's amendment is out of the question by the very fact that sixteen votes were cast against a Convention of any kind whatever; it is, therefore, impossible to return to the Carlin amendment.

In view of these circumstances, the duty and task of the Officers of the Conference is to endeavour to secure unanimous agreement on a formula in which, within the limits of possibility, our Governments and the League of Nations might be asked to arrange, by some means, for this Convention within a period which could be fixed at two years. I repeat that we have no means of forcing the signature of an international Convention, and that Governments will always be free not to sign. What we can do is to express our unanimous opinion in a Recommendation possessing all the authority of a Conference which has profoundly considered the questions submitted to it. Since the Convention has not been made, we will express a Recommendation that within a short period, and by the means which are technically and constitutionally at the disposal of the League of Nations, a new Conference be summoned to draw up and conclude a new Convention. This Recommendation will indeed be nothing more than a Recommendation, but it will nevertheless emanate from an assembly composed of the representatives of forty-two States who have assembled and who have deliberated. There can be no doubt that, as far as lies in its power, the League of Nations will put our view into practice.

This, I think, is quite clear. A broad sentiment of conciliation has inspired the advocates of the two causes. I therefore beg the assembly not, for reasons which in my opinion are mere quibbles, to prevent an agreement from being reached on the following formula which I venture to put before it :—

The Conference, bearing in mind the importance of the conclusion within a period of two years of a Convention on Railways,

Recommends that this Convention should be discussed and concluded within that period and that a Conference should meet for this purpose.

The Conference has adopted the following articles as Recommendations.

This proposal, which is one of conciliation, consists of two parts. The first refers to the summoning of a new Conference, the second refers to the adoption of the articles as Recommendations. I think that the Conference will see no objection to my putting the proposal as a whole to the vote.

The proposal was adopted by 29 votes to 2.

The PRESIDENT (speaking in French). — In accordance with this decision, the Officers of the Conference will put into the form of Recommendations the text which was submitted to you as a Convention (1).

The meeting adjourned at 7.55 p.m.

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(1) The text inserted in the Final Act reads as follows :—

"4. The Conference, bearing in mind the importance of the conclusion within a period of two years of a Convention on Railways, recommends that a Conference should meet in good time to permit of the preparation and conclusion of such a Convention within the period indicated."

TWENTY-SIXTH MEETING OF THE CONFERENCE

(Friday, April 15th, 1921, at 6.10 p.m.)

ADOPTION OF RECOMMENDATIONS — ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME OF RAILWAYS — PROPOSALS OF ITALIAN AND CZECHO-SLOVAK DELEGATIONS

The meeting opened with M. Hanotaux, President, in the Chair.

ADOPTION OF RECOMMENDATIONS

The PRESIDENT (speaking in French). — Our agenda consists of the examination of the Draft Recommendations on Railways prepared by the Drafting Committee as a result of the vote which took place at the meeting held yesterday. I will read the text, on which the Conference will vote Section by Section.

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of Communications should be applied in conformity with Article 23 *e*) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

M. BIGNAMI (Italy; speaking in French). — These last words must be omitted: we have said earlier in the paragraph : *The Conference... unanimously recommends...* This is a repetition.

The PRESIDENT (speaking in French). — I think we must keep this repetition because it renders the text clear. The Conference unanimously recommends,—that is the first point. The next point is that it recommends, and finally comes the list of recommendations. I will read Section 1.

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transhipment when this operation cannot be avoided;

The form in which international tariffs are to be established and the conditions of their application.

If there are no observations on this Section, we may consider it as adopted.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services

with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

Section 2 was adopted.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. Those measures are excluded which would involve modifications in the essential characteristics of a railway system or of rolling stock.

M. CARLIN (Switzerland; speaking in French). — I think that the expression *par contre* is unsuitable. We do not wish to exclude from the recommendation what follows; we wish to make it clear—this is in accordance with an amendment submitted by the Spanish Delegation—that this is a desire and not an obligation. We might say *cependant.*

M. SIBILLE (France; speaking in French). — It would be better to put *toutefois* (1); it is the word which is generally used.

M. LANKAS (Czecho-Slovakia; speaking in French). — We should say, *These measures do not refer to* instead of *Those measures are excluded.*

The PRESIDENT (speaking in French). — I will put to the vote Section 3, the second sentence of which is altered as follows : *These measures do not include...* (*Toutefois, ne sont pas comprises parmi les mesures...*)

Section 3 was adopted.

We now pass to Section 4.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing as far as possible for the application of these principles as between groups of contiguous territories.

M. LANKAS (Czecho-Slovakia; speaking in French). — We accepted the words *as far as possible,* which did not appear in our original proposal, in order to comply with a British amendment. The situation has now completely changed, the Draft Convention having become a series of Draft Recommendations, and it seems needless to weaken this Draft still further by the words *as far as possible.* We do not say here what the groups of contiguous territories are to be to which these principles will be applied. As the formula is sufficiently inclusive it would be reasonable to omit the words *as far as possible.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — We second this proposal.

The PRESIDENT (speaking in French). — If there is no objection, this is decided. I put to the vote Section 4 with this alteration.

Section 4 was adopted.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods having as their origin or destination any one of these States, do not depend, over one and the same throughout route in the same direction and in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods or on the flag or ownership of the vessels employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published, any private agreement having as its object the granting of rebates to one or several passengers or to one

(1) English text unchanged.

or several consignors or consignees should be expressly forbidden and considered null and void. Rebates are granted, however, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not form any hindrance to the existence and the establishment of different tariffs for internal import, export or transit traffic based on varying conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to draw your attention to the words *over the same throughout route, in the same direction.* Those who were present at the discussions in the Committee on Railways will remember that the insertion or deletion of these words gave rise to a very strong difference of opinion when we were still discussing the basis of an obligatory Convention. At that time the British Delegation, supported by the French Delegation and several others, was of opinion that these words ought to be omitted; but there were others, in particular the Swedish Delegation, the Roumanian Delegation, and I think the Serb-Croat-Slovene Delegation, who felt that in an obligatory Convention it was unwise to omit the words. As the Railway Convention has now been transformed into Recommendations, I have taken steps to ascertain whether all the delegations who supported the insertion of these words would be willing to omit them. I have consulted the Czecho-Slovak, Italian, Roumanian, Serb-Croat-Slovene, and Swedish Delegations, and they are all now willing to omit these words. I think if we are to have only Recommendations they ought to be as strong as we can make them, and as it now appears that opinion unanimously favours the omission of the words, I propose that they be omitted.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — Allow me to make a few more slight alterations and corrections.

Section 5 speaks of *goods having as their origin or destination any one of these States;* it would be better to use the words *coming from or proceeding to...*

At the end of the first paragraph of this Section, in order to retain the conditional, we should say *rebates may, or should, however, be granted* instead of *rebates are granted, however...*

The PRESIDENT (speaking in French). — The text will be altered accordingly.

M. CARACOSTEA (Roumania; speaking in French). — We have kept the words *in the same conditions.*

The PRESIDENT (speaking in French). — But we agree to omit the words *over one and the same throughout route, in the same direction.*

M. STIEVENARD (Belgium; speaking in French). — We must also omit the words *in the same conditions,* because they imply that in different conditions the inequality might depend on the particular nation concerned.

The PRESIDENT (speaking in French). — It has been asked to omit the words *in the same conditions.*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We only accepted this alteration in deference to the wishes of the British Delegation, but if it is again proposed to omit the words *in the same conditions,* we should like to return to the original text.

The PRESIDENT (speaking in French). — The Conference has decreed that the Convention be changed to Recommendations. Some delegations ask that the words *in the same conditions* be retained, whilst other delegations are of the contrary opinion.

M. STIEVENARD (Belgium; speaking in French). — I do not press for the omission of the words.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I had thought that this omission would not meet with opposition.

The PRESIDENT (speaking in French). — As the amendment to omit these words has not been pressed, we may accept the British proposal. For the sake of clearness I will read again the beginning of this Section.

That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods coming from or proceeding to any one of these States do not depend in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods, or on the flag or ownership of the vessels employed either before or after their transport by rail...

M. LANKAS (Czecho-Slovakia; speaking in French). — The second paragraph would begin as follows :

The above recommendations do not form any hindrance to the existence and establishment of different tariffs...

The word *hindrance* was quite suitable for a Convention, but a Recommendation cannot form a hindrance to the existence or establishment of tariffs. The words *do not form any hindrance to* must therefore be replaced by the words *do not refer to,* or *do not affect.*

The PRESIDENT (speaking in French). — *Do not prevent.*

M. PIERRARD (Belgium; speaking in French). — But can the expression *contraire à l'établissement d'un tarif* (1) be used?

M. POLITIS (Greece; speaking in French). — We cannot say that a Convention is contrary to the establishment of a tariff.

The PRESIDENT (speaking in French). — Why can we not say so? It is French, and very good French too. I agree that a *Recommendation which affects* is somewhat doubtful French; the word belongs to the sphere of sentiment, and a Recommendation concerning a tariff does not contain much sentiment. I think we must use the word *contraire* (1), which is clearer.

If there are no further remarks on Section 5, I will put it to the vote as modified in the course of discussion.

Section 5 was adopted.

I will now read Section 6.

6. That, without prejudice to the provisions of Article 24 of the Covenant of the League of Nations, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

Are there any remarks on Section 6? I will put it to the vote.

Section 6 was adopted.

I will read Section 7.

That in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

(1) English text unchanged.

M. LANKAS (Czecho-Slovakia; speaking in French). — Can we keep in its present form the words *recommends that in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character...*? I think that the idea which we have in mind would be better expressed in the following form :— *recommends not to deviate save in exceptional cases from the principles and provisions of the preceding article ...*

The PRESIDENT (speaking in French). — That is a totally different train of thought. I think that the form of the sentence should be changed, and that we should say *in exceptional cases deviations may be made...*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think that Section 7 should precede Section 6; the deviations to which it refers have no connection with the contents of Section 6.

The PRESIDENT (speaking in French). — You are right. The ideas do not belong to the same category.

M. CARLIN (Switzerland; speaking in French). — I should like to call the attention of the Conference to the following point. I think that if we do not omit this Section 7 we can hardly speak of *the provisions of the preceding articles...* We are dealing with mere recommendations, and I therefore think that— if we intend to keep the article at all, which appears to me superfluous—we should say *in exceptional cases deviations may be made from the Recommendations.*

The PRESIDENT (speaking in French). — But *to deviate* is no longer suitable. We have used the word *recommendations* everywhere. I think the most suitable text for what we wish to express would be *the measures of a particular character which are not referred to in the preceding Recommendations...*

M. PIERRARD (Belgium; speaking in French). — As this is only a question of text, what does the President think of the following wording, which would take the same form as in the other sections :

That in exceptional cases deviations may be made (*Qu'il puisse être exceptionnellement...*). We should use the subjunctive, and as this is a Recommendation, we should keep the same form as in the other paragraphs.

M. SCASSI (Greece; speaking in French). — We should say *the Conference considers that... may be made* (*La Conférence estime qu'il pourra être...*). We must change the sentence and not make it depend on *recommend,* but on another verb. This is not a question of a recommendation, but of an opinion.

The PRESIDENT (speaking in French). — I would suggest *The Conference recognises that in exceptional cases deviations may be made from the Recommendations in the preceding paragraphs.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — *...from the preceding Recommendations...*

The PRESIDENT (speaking in French). — *...from the preceding Recommendations...* Yes, that is better.

M. AVRAMOVITCH (Czecho-Slovakia; speaking in French). — We originally accepted the text in the hope that it would one day become the text of the Convention. I think that this text should be kept; if we changed it we should find in the end that it would be impossible to adopt it.

The PRESIDENT (speaking in French). — Your remark will be entered in the records.

M. REINHARDT (Austria; speaking in French). — I think that the word *recommendations* does not express what we mean. What we are discussing here is the provisions of these recommendations. The recommendation is what we make.

The PRESIDENT (speaking in French). — You suggest then that we should return to the word *paragraphs* instead of the word *recommendations*. I think indeed that our intention would be better expressed by the term *paragraphs*.

I will read the text of Section 7 in the form in which it emerges from the discussion which has taken place :

The Conference recognises that in exceptional cases deviations may be made from the preceding paragraphs by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

M. STIEVENARD (Belgium; speaking in French). — Can we speak of *deviating from paragraphs*?

The PRESIDENT (speaking in French). — We call the divisions in this text *paragraphs* instead of *articles*. Obviously we must say... *the provisions which are in the paragraphs*... but really I think that would be splitting hairs. However, if you prefer the word *articles*, let us use the word *articles*, but the term *articles* is used principally in laws. We preferred a less definite word which I think fully answers the purpose.

I put to the vote the text of Section 7 in the form in which I have read it.

Section 7 was adopted.

ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME OF RAILWAYS

I will put to the vote as a whole the Recommendations relative to the International Regime of Railways.

Albania	Yes	India	Yes
Austria	Yes	Italy	Yes
Belgium	Yes	Japan	Yes
Bolivia	Yes	Latvia	Yes
Brazil	Yes	Lithuania	Yes
British Empire	Yes	Luxemburg	Absent
Bulgaria	Yes	Netherlands	Yes
Chile	Yes	Norway	Yes
China	Yes	Panama	Yes
Colombia	Absent	Paraguay	Yes
Cuba	Yes	Persia	Yes
Czecho-Slovakia	Absent	Poland	Yes
Denmark	Yes	Portugal	Absent
Esthonia	Yes	Roumania	Yes
Finland	Yes	Serb-Croat-Slovene State	Yes
France	Yes	Spain	Yes
Greece	Yes	Sweden	Yes
Guatemala	Yes	Switzerland	Abstention
Haiti	Yes	Uruguay	Yes
Honduras	Yes	Venezuela	Absent

The Recommendations were adopted by 34 votes, with one abstention.

PROPOSALS OF ITALIAN AND CZECHO-SLOVAK DELEGATIONS

M. SINIGALIA (Italy; speaking in French). — The Italian Delegation does not in any way desire to return to the discussion of the Recommendations which have been adopted, but it would remind the Conference that it submitted to the Committee a request to add an article, the object of which would be the possible concession of electrical power (1).

This proposal was not accepted by the Committee for two reasons: the first was that it was thought that it did not enter into the scope of these Recommendations, and the second was of a strategical nature. As the text has now been accepted, the Italian Delegation ventures to ask whether it would not be possible, as has already been done in connection with other questions, to include this proposal in the Final Act of our deliberations in the form of a Recommendation. This passage could state that the proposal in question was not adopted in the form submitted by my delegation, because it was considered that it did not come within the scope of the Recommendations which were under discussion, but that the Conference was of opinion, in the interest of international routes of communication, that it would be desirable for the question to be considered and a solution to be found in the future. The text of this recommendation might read as follows :—

The Conference considered that the Italian proposal relating to the possible concession of electrical power for the operation of railways was outside the scope of the Recommendations relative to Railways. It considers, however, that it should bring this question to the notice of the Council of the League in the belief that it would be desirable for it to be considered in the future, in connection with the improvement of routes of communication of international concern.

The PRESIDENT (speaking in French). — You have heard the Recommendation made by the Italian Delegation. I think that the text of this proposal might be drawn up as follows :

The Conference decided that the Italian proposal concerning the possible concession of electrical power for the operation of railways exceeded the scope of the Recommendations relative to Railways. It considers, however, that it should bring this question to the notice of the Council of the League, in the belief that it would be desirable for it to be considered in the future with a view to the improvement of routes of communication of international concern.

M. ORTUÑO (Spain; speaking in French). — It is in fact a recommendation that this question should be examined.

The PRESIDENT (speaking in French). — It is a guide for the future.

M. POLITIS (Greece; speaking in French). — It would perhaps be well to state to whom and by whom such a concession would be made.

The PRESIDENT (speaking in French). — For the sake of added clearness, and in order to take into account M. Politis's remark, we might perhaps word the sentence thus *...with regard to the possible concession of electrical power between contiguous States...*

M. SINIGALIA (Italy; speaking in French). — In order not to adopt too restrictive a formula we might simply say *between States.*

The PRESIDENT (speaking in French). — There is no objection to the text of the Italian proposal, which reads as follows : —

The Conference decided that the Italian proposal with regard to the possible concession of electrical power between States for the operation of railways...

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(1) See p. 47.

It is decided then that this Recommendation will be included in the Final Act, the definitive text of which will be drawn up subsequently (1).

M. LANKAS (Czecho-Slovakia; speaking in French). — In the course of the general discussion I spoke of the desirability of a certain degree of unification from the point of view of local tariffs (2).

I brought up this question at Paris, and my view was adopted there, the following words being inserted in the former Article 1 :—*Measures to facilitate international traffic shall deal with the form of the establishment of tariffs.* Although the Italian Delegate shared my view, it was considered in Committee, when Article 1 was discussed, that it would be more logical to speak only of international tariffs in the Convention. I think, however, that all the railway experts will agree with me that it would be well to facilitate as far as possible the establishment of direct tariffs. One of the best means of arriving at this result, particularly in the case of contiguous territories, is to make the actual form of local tariffs as uniform as possible. This does not in any way affect the sovereignty of States or tariff policy; it is simply a recommendation that neighbouring countries should attempt to make the form of their local tariffs as uniform as possible in order to facilitate the establishment of direct tariffs. This recommendation might be dealt with in the same way as the Italian proposal. The text which we propose reads as follows :—

In view of the advantages afforded to the development of international commerce and traffic by the adoption of international common tariffs, and taking into account the fact that the great diversity in the form of internal tariffs offers one of the main obstacles to the easy and rapid establishment of international tariffs, the General Communications and Transit Conference considers it highly desirable that, particularly as concerns groups of contiguous territories, the form of internal tariffs should as far as possible be simplified and unified and that this question should be examined.

The PRESIDENT (speaking in French). — Subject to final drafting, is there any objection to the inclusion of this Recommendation, like the preceding one, in the Final Act?

This was decided (3).

The meeting adjourned at 8.55 p.m.

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(1) The text inserted in the Final Act reads as follows :—
"The Conference, bearing in mind that it is desirable with a view to the improvement of ways of communication of international concern that States having an abundant supply of electrical power should concede a part of it to States in want thereof, recommends that this question should be examined".

(2) See p. 21.

(3) The text inserted in the Final Act reads as follows :—
"The Conference declares that it is highly desirable that the question of the extent to which it is possible to simplify internal railway tariffs and to bring them into greater uniformity should be studied, particularly as regards groups of contiguous territories".

PART IV

DISCUSSION AND ADOPTION

OF THE

RECOMMENDATIONS

RELATIVE TO

PORTS PLACED UNDER AN INTERNATIONAL REGIME

EIGHTEENTH MEETING OF THE CONFERENCE

(Friday April 8th, 1921, at 11 a.m.)

STATEMENT ON RESOLUTION RELATING TO INTERNATIONAL REGIME OF PORTS — GENERAL DISCUSSION

The meeting opened with M. Hanotaux, President, in the Chair (1).

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STATEMENT ON RESOLUTION RELATING TO INTERNATIONAL REGIME OF PORTS

The PRESIDENT (speaking in French). — I call upon M. Adatci, one of our Vice-Presidents, to make a short statement on the Resolution relative to the International Regime of Ports.

M. ADATCI (Vice-President; speaking in French). — Mr. President, Gentlemen, in accordance with Article 23 *e*) of the Covenant of the League of Nations, provision is made in Article 379 of the Treaty of Versailles for a General Convention concerning the International Regime of Ports, to be concluded, with the approval of the League of Nations, within a period of five years dating from the coming into force of the Treaty of Peace. The Executive Council of the League of Nations accordingly proceeded to deal with this question immediately upon entering its duties; at its meeting held on February 13th, 1920, it decided to call upon the Commission of Enquiry on Freedom of Communications and Transit to prepare a draft convention, to be submitted to you for careful consideration, on ports placed under an international regime. As you are aware, this Commission did not consider it possible at that time to contemplate the concluding of a convention of this kind; it confined itself to preparing a draft resolution which should include a kind of standard type of statute for ports placed under an international regime. It is this draft which is submitted to you for consideration.

Ports have at all times and in all places constituted vital parts of the countries possessing them. There have even been many ports which in themselves constituted empires or republics,—for example, Tyre in ancient Phœnicia, Carthage, Venice; and besides these particularly striking instances, it may be said without exaggeration that for most countries ports are the organs essential to their existence, which enable them to establish contact with foreign countries. Thus when in 1857 Commodore Perry, of North America, came at the head of a powerful fleet and asked the Shogunal Government of Japan to open certain Japanese ports to foreign commerce, the Japanese nation at once instinctively realised that this was equivalent to opening the whole country to international intercourse, and after long hesitation decided to enter unreservedly into the path of international co-operation by opening five of the principal ports of its empire.

The Commission of Enquiry which drafted the text of the Resolution now before you in no way intended to propose that such and such a port should be placed under an international regime. This point is left to the free decision of sovereign States either by means of treaties concluded between them or whenever, desirous of establishing in their ports a regime of freedom and complete international co-operation,

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(1) The first part of the meeting was devoted to a discussion on the Rules of Procedure.

they might think fit to do so by means of unilateral acts. To place the ports of any country under an international regime is of the greatest importance to that country; there must be weighty reasons for such an act, and, moreover, rights and interests of the most varied kinds must be harmonised, whilst the fundamental purpose which the whole of mankind hopes to achieve from the creation of such ports must be fulfilled. The authors of the *Green Book* have fully considered all these requirements and are firmly convinced that they have dealt successfully with this important question. The Conference will itself perceive the justice of my appreciation when it examines the text and the report on this subject. In the Treaty of Sèvres itself the provisions drawn up by the authors of the *Green Book* were adopted in Article 335 and the following articles, in respect of Constantinople, Haidar Pasha, Smyrna and Alexandretta, Caipha, Bassorah, Trebizond and Batum, their practical usefulness being thus proved. I think there is no need for me to recall the principles upon which the proposed "standard statute" for ports is based. The text of the accompanying Draft is sufficiently explicit. I merely wish to dwell upon certain important points.

The Draft Resolution speaks of *the authority under which the port is situated.* This expression *authority*, which was very carefully chosen by us at Paris after long discussion, applies to all cases—suzerainty, protectorates, mandates—in which the State responsible for the application of the Convention does not exercise any sovereignty over the territory. It would appear impossible to fix in advance in every case which of the signatory States will be responsible for this application. These are important technical and legal questions, and, if difficulties arise, they are to be solved separately in each individual case. The State responsible for any measure is that which actually possesses the means of both taking the measure and of preventing it, and where sovereignty and authority are divided between different States, as, for example, in the case of leased concessions which entail such a division, it would be for these States to arrive at an understanding with a view to applying the present Convention. But whatever the solution adopted, the special acts referred to in the Preamble require in particular the consent of the State under whose sovereignty or authority the port is situated, because the system of sovereignty and authority presents difficulties—sometimes very considerable ones,—in various parts of the world. The words *in particular* mean that it is not intended that this consent shall be sufficient in all cases. Similarly it may be pointed out that though the Commission unanimously considered it desirable that the flags of vessels of any State having no sea-coast should be recognised in the ports referred to in the Resolution, when such vessels are registered at some one specified place, it did not consider it desirable to insert a special text in the Resolution. A special text has been proposed for this purpose to settle the question in an entirely general manner (1).

When considering the question of ports, the Commission was faced with the great problem of maritime coasting-trade. It was neither able nor willing to consider this problem as a whole; it went no further than to lay down provisions which should apply to ports placed under an international regime and to express the Recommendation which I will again affirm here, to the effect that the definition of the regime of national maritime coasting-trade should be considered as soon as possible, with the co-operation of the necessary maritime authorities. I should be most happy it the Conference could devote a little of its valuable time to giving at least a general consideration to this question, which is of such great importance to every country. I think that the Conference would do well to consider the Draft Resolution now, and that the experts from all parts of the world who are solemnly assembled here today will render signal service to all the States which are to regulate jointly international questions relating to ports, by furnishing them, as we propose, with a model statute which will thus have been subjected to a thorough discussion.

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(1) See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern and the Declaration recognising the Right to a Flag of States having no Sea-coast,* Part 4.

GENERAL DISCUSSION

The PRESIDENT (speaking in French). — The question of the international regime of ports is now open for general discussion.

M. FREIRE D'ANDRADE (Portugal: speaking in French). — As a result of the geographical position of Portugal and her colonies, several of her ports are very generally used for international commerce, and our Government has taken measures with a view to developing this use of our ports to the greatest possible extent. Even when, as at Lorenzo Marques, we do not secure any appreciable financial results from it, we still gain through the consolidation of our commercial and economic relations with our neighbours.

Though our railway system is not very extensive and our navigable waterways are not numerous, we have in our territory a large number of ports, some of which are the best in that part of the world; these ports have ever been freely open to the navigation of all peoples without any distinction of nationality.

In our colonies of Angola and Mozambique and in India, the first railways which we built—often at the cost of great sacrifice—were intended to be used for purposes of transit. We gave them preference over the most vital interest connected with the development of our agriculture and industry. Thus in Angola we began to construct the railway to Katanga, though, as the result of difficulties which we are only too desirous of removing, this railway has not yet been completed. In Mozambique the lines from Lorenzo Marques to the Transvaal and from Beira to Rhodesia have been built, and the line to connect Beira with British Central Africa is in course of construction. In India we have built the line from Marmagao to the frontier. Our principal rivers in Mozambique have been internationalised, and the Zaire is subject to the regime of the Congo Basin. I could quote further examples to show that, as regards international transit, our regime is based upon the most liberal principles of equality. I hope therefore that the Conference will see in the remarks I am about to make nothing more than a desire to obtain information concerning the regime proposed in the *Green Book*, which I confess awakens some uneasiness in the minds of the Portuguese Delegation. Small countries, or, as they are called, countries with limited interests, must be fully cognisant of what they are undertaking before they sign engagements.

As I have already informed the Conference, Portugal cannot renounce the right of decreasing her export duties on goods loaded in her ports and destined for other national ports, whether they are conveyed on national or foreign vessels. We make this distinction only in the case of goods of Portuguese origin transported between Portuguese ports, and its main object is to encourage the despatch to the mother-country of raw materials produced in her colonies on the west coast of Africa.

During the war, Portugal, like most of the Allied countries, adopted the system of prohibiting exports abroad, but this system, though possible in time of war, cannot be maintained in time of peace, when the economic situation has again become normal; we have therefore abandoned it.

Article 8 of the Resolution lays down that all customs duties must be uniform, whatever may be the flag of the vessel effecting the export, and no distinction shall be made when the transport is effected between ports of one and the same country.

All countries naturally desire to improve their ports, but they cannot be expected to carry out extensive works in all the ports situated in their waters. It is indeed a generally recognised rule that all available resources should be concentrated in order to improve a limited number of ports to the utmost possible extent. Article 3 states that it shall be the duty of the State under whose sovereignty the port is situated to take *suitable measures to remove any obstacle or danger to navigation...* It may happen that a country has several ports in close proximity, as in the north of Mozambique. In such a case the State cannot be called upon to carry out works for lighting, dredging, and so on, in all its ports, but only in those in which it considers that there is the greatest advantage in so doing. Moreover, the word *suitable* is vague and indefinite.

A wealthy State may carry out very extensive works, whereas a poor State has not the same means of doing so.

If a State undertakes works in one of its ports, who can judge whether these works are of such a kind as to prejudice the free use of the port or of the approaches thereto, as is enacted in Article 4?

It should be pointed out here that, whereas in the Draft Convention on Navigable Waterways we asked that a State should have the right to carry out works on the territory of another State, in the Draft Resolution on Ports countries are forbidden to carry out works in any of their own ports, if another country considers that such works may endanger the approaches of the port. Before carrying out what it considers to be beneficial, a State employs experts to investigate the regime, requirements and characteristics of its port, in order to carry what it considers desirable. Is it to submit its plans to experts of the League of Nations or its technical committees? I do not think that would be practicable or in consonance with the principle of the sovereignty of a State, which is so carefully safeguarded in the Covenant. If a State proposes to improve a port, and obtains the means of so doing, I see no reason affecting the general interest to prevent its carrying out the works which it desires. All over the world there are rival ports which are seeking to attract the traffic of the hinterland which they serve, and it would be most dangerous to allow a principle to exist by which one port might prevent another from improving its transit facilities.

As regards free zones in ports, it would be desirable for the State under whose sovereignty or authority the port is situated to have the right to reserve the free zone exclusively for certain products, while at the same time treating all the nationals and products of all other nations on the same footing. Cases may arise in which the small extent of the free zone may require these restrictions.

These are the reasons which have led the Portuguese Delegation to submit amendments to the Draft Resolution. In these amendments it asked for certain articles to be drawn up in such a way that there can be no doubt as to the method of their application. We also ask for the rights guaranteed by the Covenant to be maintained. Finally, we wish to state to the Conference that the sole desire of Portugal, which possesses ports in the Atlantic, on the Mozambique Canal, in the Indian and Pacific Oceans, is to improve her ports as far as her resources allow, and that, far from raising the shadow of a difficulty in the way of international traffic through her ports, she desires this traffic to increase more and more.

M. AMUNATEGUI (Chile; speaking in French). — The question of ports is one of the most interesting and also one of the most difficult of those before the Conference. As we have already had occasion to state to this assembly, Chile has always from the very beginning of her independent existence been distinguished for her policy of freedom. Her ports have been open to the commerce of the whole world, with equality of rights, both for her own citizens and for those of other countries. The Government is at present occupied on improvements in order to provide still more facilities; it is also engaged in developing the national mercantile marine while reserving coasting-trade exclusively for its own flag.

The Conference has realised to the full the importance of this matter in the Draft now before us, and also all the difficulties which arose before a general agreement could be attained. However, we think that the work now begun must be continued, and further meetings must be arranged in order to achieve the great aims which the League of Nations is pursuing for the welfare of humanity. For the moment we are only considering ports placed under the authority of the League of Nations and those under an international regime. We could certainly not prepare a convention on this subject, and in the opinion of the Chilian Delegation we could not adopt resolutions either. In view of the present state of our investigations, we think that the only possible course is to submit declarations and recommendations specially to the League of Nations and to the countries under whose sovereignty and authority ports subject to an international regime are situated; such declarations and recommendations could serve as a basis or definitive agreements.

We also consider it necessary to establish clearly the difference between ports to

which these proposals apply and national ports which every State opens to international commerce.

Finally, we consider it desirable that this Conference should make a declaration of principle concerning the freedom and equality to be enjoyed by all flags in the ports of the whole world, and that it should proclaim its desire to see work begun for a new Conference on ports. These are the main lines of the proposal which we have the honour to submit to the favourable consideration of the Conference.

M. WINIARSKI (Poland; speaking in French). — Before proposing a motion on the subject of these draft regulations, I should like to recall briefly what took place at the Commission of Enquiry when it discussed this question. At the outset of the discussion almost all of us considered that it was not a suitable time to examine the question. We did not know to which ports the standard statute which it was proposed to prepare might apply. We had even proposed not to discuss the question at all, and the majority of the Commission of Enquiry favoured this proposal. We then yielded to the entreaties of General Mance, who succeeded in winning the confidence of us all, and we decided to continue the discussion, as it were on a theoretical basis. I at once asked whether any port existed to which such a regime had already been applied. The answer was in the negative. I then wished to know to what port it was considered that the statute should apply in the future. Certain ports were mentioned—I will not be indiscreet—ports in the Baltic, Mediterranean, Adriatic and Ægean Seas. But the announcement of these names was followed by vigorous protests from the States concerned; several States even declared that they would never admit that the regime laid down in the draft should be applied to any of their ports whatever. Constantinople was then mentioned, as the Ottoman Empire, having no representative at the Commission of Enquiry, was not in a position to protest.

M. Adatci says that some use of this Draft was made in the Treaty of Sèvres. I think that at the present time it is indiscreet if not unwise to mention the Treaty of Sèvres. We are to-day faced, as we were a year ago at the Commission of Enquiry, with a purely theoretical question. Are we obliged to deal with it? I note that the Covenant of the League of Nations is silent on this point; it speaks of freedom of transit, of communications, of equitable treatment of commerce, but it does not speak of ports. Are we bound by the Treaty of Peace? Not at all. The article cited by M. Adatci speaks of : *Any General Conventions regarding the international regime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers...* That then is optional, but a considerable task still lies before us, and time is pressing. We had hoped that on Sunday next the Conference would have completed its labours, but we all agree now that we must abandon that hope. This is an additional reason for not hastening the discussion of this question. The Polish Delegate therefore proposes to postpone the consideration of it until a suitable occasion arises.

The PRESIDENT (speaking in French). — M. Winiarski's speech is not a mere statement, but a motion on the agenda.

M. MATSUDA (Japan; speaking in French). — At the present time, when the task of our Conference is well advanced, and the close of our work is already in sight, we will not detain you long with statements upon questions concerning international ports. But the Japanese Delegation, which is strongly in favour of freedom of communications, would like, now that the discussion on the international regime of ports is about to begin, to state the views of the Japanese Government on matters relating to the carrying on of maritime coasting-trade. As you are aware, this question is usually dealt with in commercial and navigation treaties, and also in national legislation.

The Japanese Delegation would like to express to the meeting the readiness of the Japanese Government to allow foreign vessels the right to carry on coasting-trade, of course subject to reciprocity. The Japanese Government is quite convinced that there exists in the different countries different laws which might be said to justify the maintenance of their regime in respect of this question, each in its own domain, from the point of view of foreign or domestic policy. But on the other hand we cannot forget that we are faced with a new fact,—the Covenant of the League of Nations. According

to the spirit of the Covenant, it is quite certain that the carrying into practice of the principle of freedom of communications is an essential element for the maintenance of the peace of the world; indeed it is, I am sure, one of the principal reasons, and, if I may say so, the sole object of this Conference. If it did not attain this object, the efforts of the Barcelona Conference would not be crowned with real success. In these circumstances we venture to describe in somewhat greater detail—though very succinctly—the ideas which guide us in this matter.

Vessels, by their very nature, possess an international character. Thanks to the boundless oceans which surround us, they go to all parts of the world, they come from all parts of the world. In these international communications the reservation of maritime coasting-trade would gravely prejudice the principle of freedom of communications. Unfortunately, to our deep regret, this question was not settled by the Commission of Enquiry, which prepared these drafts. Indeed in this Commission an opposite theory was advanced; certain of its members considered that a reservation of this kind in no way restricted freedom of international communications. We greatly regret to find a difference of opinion, in face of the principle so clearly enunciated in a spirit of freedom by the Covenant of the League of Nations. In any case we proposed that this question should be discussed in sub-committee and that it should receive full and minute consideration.

We will confine ourselves to pointing out here that article 7 should be omitted, because in our view this article admits that contracting States could not grant other States the right to carry on maritime coasting-trade, and this would be to admit the opposite principle to that of freedom of communications.

However, we do not insist upon this principle, highly desirable as it may be, realising as we do the difficulties which certain Governments would encounter from another quarter. I think that no State will see any serious objection to undertaking to allow foreign flags the right of coasting-trade if there is reciprocity. In fact the majority of States already grant it on terms of reciprocity. We therefore consider that the views which we have expressed would bring all countries to agreement, because these views are formulated with the object of reconciling the principle of freedom with present conditions in the various countries. The problem is to discover what is the best formula for the realisation of these ideals, and we think that this should be the subject of consideration by the sub-committee which is to be formed. I may add that in our view the best form will be that of a general convention composed of a single article, similar to that relating to the flags of landlocked States.

M. van EYSINGA (Netherlands; speaking in French). — The Commission of Enquiry on Freedom of Communications and Transit, while recognising that a convention on ports would undoubtedly be desirable in order to allow full scope to the principle of freedom of communications, thought it necessary to postpone consideration of it and only to transmit to the General Conference a draft standard statute for certain ports, which might be adopted by the Conference in the from of a resolution. The main idea of the Resolution is expressed in Article 1 : The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated on a footing of absolute equality, and in particular no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is placed. This idea has for long been applied in the Netherlands. That country, in which lived Hugo de Grote, one of the founders of international law, carried on a century-long struggle for freedom, and did not keep this freedom solely for its own citizens; as a nation of navigators, it is of great concern to us that the ports of all nations should equally be free.

Our coast has no natural ports, and lends itself but little to the construction of ports; the shore slopes gradually downwards, great quantities of sand are often driven by gales into the outer ports, and this sand has to be removed by perpetual dredging. In spite of this, there are six large ports, among them two of capital importance, although the coast between Belgium and Germany is only 400 kilometres in length. The two latter are Hook of Holland with Rotterdam, with a traffic of 78 million tons and a movement of more than 22,000 vessels in 1913, and Ymuiden with Amsterdam with a traffic in the same year of 27 million tons and about 15,000 sea-going vessels and also 6,500,000

tons and 32,000 fishing-vessels. The four ports of lesser importance are Flushing, Helder, Haarlem and Delfzijl. Except Helder, the importance of which has greatly diminished since the construction of the North Sea Canal to which Ymuiden gives access, these latter ports are important enough to merit improvement to enable them to meet the needs of traffic. The entrance of the port of Haarlem was improved some years ago, and at the present time improvements on a large scale are being carried out at Hook of Holland, Ymuiden, Flushing and Delfzijl. Allow me briefly to explain these schemes of improvement in order that you may realise that the freedom of navigation which we offer is not without value for the shipping of the world. The port of Hook of Holland, which connects the Nieuwe Waterweg to Rotterdam, and which forms the principal entry to the Rhine, is now 10.50 metres deep at normal high water. A scheme, upon which work has recently been begun, comprises first of all an increase of the depth to 12.50 metres at the mouth and 11.50 metres over the rest of its course, and even later to 13.50 and 12.50 metres respectively. Thus, vessels drawing 12.50 metres—the largest which can pass through the locks of the Panama Canal—may enter the basins of Rotterdam. The port of Ymuiden gives access to the canal connecting Amsterdam with the North Sea. This canal is separated from the sea by several locks, and a new lock is in course of construction of very extensive dimensions, the length being 400 metres, width 50 metres and depth 14.50. For your information I may add that the Olympic, of the White Star Line, is 270 metres long and 28 metres wide, draws 10.50 and has a tonnage of 45,000. Vessels of 100,000 tons, which would be much greater than the leviathans of today, could thus pass through this lock. The canal and port of Ymuiden will thus be increased, and a new mole will be built extending 2,200 metres into the sea. In a few years Amsterdam will have the widest and deepest canal in the world. The cost is estimated at some ten million florins. The improvement of the port of Flushing, which is of great importance from the point of view of communications between the Netherlands and England, consists chiefly of the construction of a new open basin 20 hectares in area and 8 metres deep at normal low water. The works at the port of Delfzijl are already at an advanced stage; the area of the basins will be increased by about 20 hectares, 10 hectares of which will be deep enough for vessels of 10.000 tons with a draught of 7.50. The importance of Delfzijl arises from its timber traffic with the countries of northern Europe.

I have tried to make my statement very brief, but I was particularly anxious to bring to your notice the very extensive works undertaken by the Netherlands. Moreover, although the financial situation of our country is not at all favourable, the Government did not wish to suspend the carrying out of these improvements. After the troubled period through which we are all passing, we are looking forward to a more encouraging future, and to a revival of commerce greater than has ever before been attained. This development will be the more speedy if the difficulties which hinder transport traffic are lessened; the Resolution proposed to us contains the principles which must be taken as a basis for the attainment of this end. In conclusion, the Netherlands Delegation expresses the hope that the equality of treatment applied in the ports of the Netherlands will also be applied to the utmost possible extent in all the ports of the world, to the very great benefit of international intercourse.

The PRESIDENT (speaking in French). — The discussion on ports is closed. We have before us a programme proposed by the Polish Delegation, asking that this question should be postponed until the right moment for dealing with it. The Conference may therefore vote at once on the Polish proposal, which would of course obviate any further discussion, or it may refer the text of the Polish amendment to a committee, the Waterways Committee, for example, which would discuss the question and present us with a report. Moreover the programme of the Conference is a very full one; I wish to make this observation in the general interest of the Conference and of the work which lies before us.

M. ADATCI (Vice-President; speaking in French). — I see the force of the view taken by M. Winiarski, the Polish Delegate, and I think there is good foundation for it; but in view of the request of the Council of the League of Nations that we should consider this Draft, and as it has already been very carefully studied, I propose that

this question—a comparatively simple one—should be referred to a Committee, which will arrive at a decision. I would have shared M. Winiarski's view, but I remembered that the Council of the League of Nations had entrusted us with the task of considering the standard statute for ports. We must consider this matter thoroughly for an hour or two, and after discussion we will see whether the proposal should be adopted or not.

M. NEUJEAN (Belgium; speaking in French). — I fully support M. Adatci. It seems to me that the Conference cannot possibly shelve the question without having either discussed or examined it; it is essential that it should be referred to a Committee, which will consider the Polish proposal and will also take due heed of the opinions of the Japanese, Netherlands and Portuguese Delegates.

The PRESIDENT (speaking in French). — Any request to refer a question to a Committee must of right be complied with; but we must know whether it will be referred to the Waterways Committee or to a special committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I support M. Adatci's proposal; in deference to the Council of the League of Nations, which placed this Draft Scheme Regulation on our agenda, we ought to refer it to a committee, which will decide whether it should then be sent back to the Plenary Conference.

The PRESIDENT (speaking in French). — Has the Polish Delegate any objection to the proposal to refer the question to a Committee?

M. WINIARSKI (Poland; speaking in French). — No, since this reference is a matter of right. But I should like to point out to M. Avramovitch that my proposal implies no lack of deference towards the Council of the League of Nations.

The PRESIDENT (speaking in French). — There can be no question of that; all views may be freely expressed here.

The question now arises as to what procedure will be employed for the Polish proposal, the effect of which would be to leave the question of ports entirely aside. M. Adatci asks for the proposal to be referred to a Committee. I think we cannot but accede to this request, as the Polish Delegate himself agrees to it.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Will the question then be returned to us in plenary meeting?

The PRESIDENT (speaking in French). — Certainly, in the Report of the Committee to which it is referred.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I propose to refer both the Draft Resolution and the Polish proposal to a Committee, either the Waterways Committee or any other. In any case the question would come before us again.

The PRESIDENT (speaking in French). — We should do well to accept M. Medina's proposal. There now remains the question of the Committee to which the matter will be referred,—will it be the Waterways Committee or a special one?

I will put to the vote the question referring the matter to the Committee on Navigable Waterways. If this proposal is lost, it will mean that the Conference wishes to refer the question to another Committee. I put to the vote the question of referring the Draft concerning Ports and the Polish amendment to the Committee on Navigable Waterways.

The proposal was adopted by 30 votes to 2.

The meeting adjourned at 1.30 p.m.

TENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 8th, 1921, at 4 p.m.)

DISCUSSION OF PRESENT DESIRABILITY OF CONSIDERING RESOLUTIONS RELATIVE TO PORTS

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair (1).

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DISCUSSION OF PRESENT DESIRABILITY OF CONSIDERING RESOLUTIONS RELATIVE TO PORTS

The CHAIRMAN (speaking in French). — At the plenary meeting this morning our Committee was entrusted with the task of considering the question of ports. A preliminary question has been put in by M. Winiarski.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation proposes to postpone the consideration of the text relating to ports until the time is really opportune for such consideration. We consider that this resolution on ports is not so essential that the Conference, whose Agenda is already very loaded and its time limited, should be obliged to deal with it now. Moreover in the Covenant of the League of Nations, as in the Treaty of Peace, there is no obligation for the League of Nations. Of course the Council of the League has referred the question to us, but we may respectfully point out that it is not yet ripe. I may add that in order not to lay ourselves open to any suspicion it would also be well for us not to deal with it now. I therefore propose to refer this question to a subsequent Conference when the proper time has come to consider it.

The CHAIRMAN (speaking in French). — I did not understand one of your remarks. You spoke of "suspicion."

M. WINIARSKI (Poland; speaking in French). — I will explain myself, in order to avoid any misunderstanding. We are here divided into two camps on questions of transit, navigable waterways and railways, and I think it is unnecessary, to say the least, to widen this division.

M. DUCHÊNE (France; speaking in French). — I cannot but support the proposal of the Polish Delegate. We think, as he does, that it would be premature to deal with this exceedingly difficult question now. If we wished to discuss it too early, we should incur the risk of adopting useless formulas or of leaving numerous gaps. This is in fact what has happened to the Draft Resolution now before us. In French law, and perhaps

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(1) The beginning of this meeting was devoted to the discussion of the Draft Convention on the Regime of Navigable Waterways of International Concern. (See *Verbatim Records and Texts on the Regime of the Convention on Navigable Waterways of International Concern*, p. 212.)

in others also, there is a saying: *donner et retenir ne vaut.* In the present case we are obliged both to give and to withhold. We should impose certain rules and immediately afterwards we should be obliged to restrict their scope. The Preamble speaks of an international regime, and immediately adds that a special act will be necessary to establish this regime. In Articles 1 and 2 certain rules are laid down, and immediately afterwards their scope is restricted. The Draft refers to *reasonable* provisions, but leaves it to each State to ascertain wherein lies the reason. Further on we find, in Articles 5, 6 and 10, regulations which appear quite clear, but the scope of which is at once restricted by the formula *subject to special provisions...* In Article 8 a principle is enunciated, but is at once corrected by the providing of exceptions. It could not be otherwise at the time when the Draft was prepared, and I think that at present these dangers are unavoidable; on the contrary, they would become all the more evident, together with all the complications to which we should be exposed.

What would happen if we went further? This, I think. We should expend much goodwill in drawing up a text, somewhat on the lines of those now before us in the Draft, in which we should affirm everything, while at the same time restricting the scope of what we have affirmed. The text would probably be unworthy of a Conference such as ours, which aimed at attacking all questions seriously. None of us wishes our labours to result in a text which should not be completely satisfactory. Moreover, would this text be a Convention? No. According to the commentary it would be a "recommendation" or even a "resolution". Here would be another difficulty. Is a resolution the same as a recommendation? I do not think so; a resolution is more than a recommendation.

I see only one solution which would be calculated to reconcile all views; it is that proposed by the Polish Delegation, and consists in leaving the Council of the League of Nations to decide the time when it should entrust a special Conference with the task of considering the question thoroughly, and drafting a text worthy of a meeting of the representatives of all the members of the League of Nations.

Mr. H. O. MANCE (Great Britain). — I think we must all have been impressed by the argument that our Agenda is very full; it is an argument which we shall be forced to take into very serious consideration in the course of a few days. But before dealing with that aspect of the question I should like to refer to a few observations which various delegates have made.

First of all the Delegate of Poland stated that the time was not ripe for dealing with ports. I think that point has already been cleared up at the plenary meeting this morning; but as there is one fact which has been borne in upon me personally, on account of the special position in which I found myself, and which I should like to communicate to the Committee; these provisions are already in force at the present time. I well remember that the text of the Draft Resolution on Ports, submitted in second reading to the Commission of Enquiry at Paris, was urgently called for in London in order to be inserted in the Treaty of Sèvres, and applied to the Ports of Constantinople, Smyrna, Alexandretta, Kaifa, Basra and others. It is therefore a text which is already in force, and the Draft proposed to us has already rendered the great service of enabling a regime which had to be hurriedly prescribed, to be based on the work of the Commission of Enquiry, thus avoiding the risk of serious errors which might have resulted from a hurried draft. I think that is ample proof that the time is ripe to draw up a text on ports. Our text is really only a standard statute suitable for application. We were all agreed at the Commission of Enquiry at Paris that the time was not ripe for an International Convention on Ports, but all that we did was to discuss a suitable regime which might be applied to ports which were declared to be of international concern. It would be a great loss if we were obliged, owing to lack of time, to postpone this matter; the opinion of the British Delegation is that the adoption of this regime voluntarily by certain States in their own interests might prove to be a very great advantage to the ports concerned. I have been much interested, since I have been here, to hear of one State which is seriously considering placing one of its ports under this regime. I therefore really think that the advantages of this Resolution, which in its present form does not bind anybody, are very great. As to the question of time, I admit that that argument is serious, but I would suggest that it is

not necessary to decide actually to-day whether to continue our study of this text or to shelve it. As the question has now been referred to us, let us wait two or three days to see if we have not time to consider this text, and to use it at least as a basis of discussion in order that there may be something which may serve until such time as the League of Nations has considered whether it is possible or not to take any further action in this direction.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I agree with the remarks of the British Delegate.

M. LELY (Netherlands; speaking in French). — I quite agree with the British Delegation that we should now discuss the proposed Draft on Ports. Article 379 of the Treaty of Versailles speaks of three conventions,—on navigable waterways, ports and railways.

M. SCASSI (Greece; speaking in French). — For the reasons which have been adduced, I also support the British Delegate.

M. BIGNAMI (Italy; speaking in French). — I only wish to say that in view of the reasons adduced by the British Delegate, I think we must wait a few days to decide whether the Draft Resolution is to be considered now or referred to a later Conference.

The CHAIRMAN (speaking in French). — Does General Mance think that a sub-committee should be formed now or that the question should be left in abeyance for two or three days?

Mr. H. O. MANCE (Great Britain). — The President's words have suggested an idea to me. If it were possible to set up a Sub-Committee on which there would not sit the same Delegates as the Waterways Committee,—a Sub-Committee consisting simply of Delegates of States who have ideas on the subject—it might be useful for them to meet to discuss the matter and ascertain whether, in the event of our examining it here in the Committee, there are likely to be serious difficulties. That would help us very much in deciding whether we can spare the time for it.

The CHAIRMAN (speaking in French). — There are two questions before the meeting; firstly, the main question raised by M. Winiarski, with regard to which two different views are held, and, secondly, the question of the method to be employed in forming the Sub-Committee. We must come to a decision with regard to the preliminary question,—that raised by M. Winiarski, that is to say, the advisability of considering the Draft now before us.

M. WINIARSKI (Poland; speaking in French). — I would say two words in answer to General Mance. I agree with him that what we did at Paris and what we have before us here is perhaps good, even very good. Perhaps some States will voluntarily accept this regime as far as they themselves are concerned; but at Paris I always heard the contrary. All the States represented on the Commission declared that they would never accept it for their own ports. If, as General Mance supposes, a State wished to apply this scheme to any of its ports, it would always be free to do so. We are not here to prepare a Convention which will not be binding on anyone. If a State wishes voluntarily to apply the international regime to any of its ports, the *Green Book* is a treasure rich enough to enable it to be taken as a model.

I do not know whether the Treaty of Sèvres has been ratified and is in force. If so, perhaps it would be better to wait until the provisions regarding ports have been applied and produce results. If this experiment is successful, the Council of the League of Nations will in a few years submit the question to the General Conference on Communications and Transit.

The CHAIRMAN (speaking in French). — M. Winiarski has alluded to what took place at Paris. I for my part would be very pleased to hear M. Haas on this subject.

At Paris I was the head of a delegation, I attended the Commissions, but I was sometimes absent from important meetings. I will ask the Secretary-General to be so good as to speak on the subject.

M. HAAS (Secretary-General of the Conference; speaking in French). — As the Chairman has appealed to my memory, I will only say that I am somewhat astonished at the discussions which have arisen here today, in view of the fact that at Paris nothing was adopted so rapidly and easily as this modest draft scheme, establishing a standard type of statute for ports placed under an international regime. I do not know whether at that time all the delegates represented swore in their inmost heart never to apply this regime to their own territory, but in any case—and perhaps this was the very reason—no amendment was submitted to the first scheme proposed, and I think it was adopted at the very beginning of the meeting. Moreover, these two meetings were occupied not so much with the discussion of amendments on matters of detail as with an exchange of views with the object of clearly setting forth the fundamental character of this resolution, which is not in any way, to any degree and by any manner of means a convention or international engagement of any kind; it is merely a standard type of statute, placed like a tool at the disposal of whoever might require to use it at any given moment.

I think that whatever opinion may be held regarding this text (and I am fully alive to all the arguments which take account of the formidable task which the Committee must undertake) this work must certainly be regarded as an attempt at one of the practical services which the League of Nations may render to the States of the world whenever they may need it. There was no question of imposing the regime laid down in this Resolution on any State whatever, in any circumstances, or at any time. The intention was merely that, in certain specified political or territorial conditions, States undertaking mutual engagements might need a ready-made regime for ports. This intention was formulated before the Treaty of Sèvres was thought of, and the Treaty of Sèvres, as General Mance has said, confirmed this aspect of the matter in a most striking manner, since the Commission of Enquiry, without knowing or willing it, was found to have produced certain of the provisions which were included in this Treaty.

It has been said that similar cases may occur; it has even been said that, apart from international treaties, there might be numerous instances in which States might wish, on their own initiative, and simply in their own interests, to place their ports under this regime, and that we might perhaps take advantage of a meeting of technical experts—the gathering was then incomplete, but today is of a world-wide character—and utilise these exceptional circumstances to render these States this service in advance once and for all. The problem before the Conference is to weigh on the one hand its very natural haste to terminate its labours and to devote as much as possible of its valuable time to that part of its work which I am the first to recognise as particularly essential, and, on the other hand, the fact that it would be a great pity, when technical experts from all parts of the world are assembled here, not to use their services as fully and completely as possible.

M. DUCHÊNE (France; speaking in French). — I should like to add a few words to the statements which have been made on either side. I think that we are all agreed; it is very difficult,—nay, almost physically impossible at the point which we have reached in our work—to consider this question thoroughly. On the other hand we are all agreed, as General Mance has said and as the Secretary-General has reminded us, that the study of this Draft can always be resumed when the regime of a port has to be defined. If we wish to take further steps and ask a special Committee to make a complete study of the question, I think it would not have the time to do so, and it could not produce anything better than the Draft which we already have before us.

Could we not all agree to simplify the task of the Conference on this point by confining ourselves to a resolution which would be a real recommendation in the proper sense of the word? We would recommend all States Members of the League of Nations, and all Powers which at any particular time might wish to define the regime of a port, to put into practice the provisions contained in this Draft, by adapting them as far as possible to the circumstances with which they might be faced.

The CHAIRMAN (speaking in French). — That is a secondary question. The primary one is whether we are to postpone the whole matter.

Mr. H. O. MANCE (Great Britain). — The contribution of M. Duchêne to our discussion is a very useful one, and if, in the last resort, we cannot go further with this recommendation, it might be desirable to have a resolution of that nature as a provisional measure, rather than drop the matter. At the same time I think there would be a great advantage in setting up a small, even if unofficial, Sub-Committee, to ascertain the views of any delegates who have perused the Draft and can give us their experience on the subject. If there are no very serious objections to the Draft, and if we have no time to carry it through in its present form, we could, in the last resort, contemplate the adoption of M. Duchêne's proposal.

M. WINIARSKI (Poland; speaking in French). — I still maintain my proposal.

The CHAIRMAN (speaking in French). — The effect of M. Winiarski's proposal would be that we should defer this matter to a later and more appropriate date.

M. WINIARSKI (Poland; speaking in French). — ...to be fixed by the Council of the League of Nations?

The CHAIRMAN (speaking in French). — ...to be fixed by the Council of the League of Nations.

Mr. H. O. MANCE (Great Britain). — Before the vote is taken, may I point out that it seems to me that the only question immediately before us is whether we decide now to postpone the matter or whether we leave the decision to a later date? According to my proposal, the question was to be left open until we had ascertained how much time was at our disposal. The proposal of the Polish Delegate is to settle it now.

In order to help us to arrive at a decision, I suggest that we should invite those States which are interested in this scheme, and which have special competence in it, to assemble unofficially under the chairmanship of M. Freire d'Andrade, for example, to see whether they can make any suggestions which would enable us to ascertain whether our text should take the form of recommendations, or, as suggested by M. Duchêne, of a resolution.

M. WINIARSKI (Poland; speaking in French). — I accept General Mance's proposal. This small committee, which will be composed of any delegates who wish to be members of it, will show us its reasons why this question must be fully discussed and a resolution or draft convention passed now.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — It would be better to take a decision now on the question whether we are to examine the matter or not. Why should we appoint a committee to examine it if we are not to deal with it?

The CHAIRMAN (speaking in French). — Has M. Winiarski withdrawn his first proposal, and does he second that of General Mance?

M. WINIARSKI (Poland; speaking in French). — Yes, because the principle of the question remains the same. It is in the interests of general agreement that I second General Mance's proposal.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — You stated that this sub-committee is to ascertain whether the question should be dealt with now or not.

M. WINIARSKI (Poland; speaking in French). — I shall wait for the opinion of this sub-committee before again putting forward my proposal.

M. DETŒUF (France; speaking in French). — M. Winiarski appears to have somewhat misunderstood General Mance's proposal. General Mance proposes to appoint a sub-committee to consider the draft, whereas M. Winiarski apparently only wishes this sub-committee to consider whether it is desirable or not to examine the question now. Thus M. Winiarski thinks that when, in a few days' time, the sub-committee submits its report, it will be only the question of the desirability of discussing this subject which will be dealt with, whereas General Mance's intention is that it is the question as a whole that should be treated.

M. WINIARSKI (Poland; speaking in French). — On the contrary, I think that I agree with General Mance. This sub-committee cannot possibly discuss the principle of the question before a discussion has taken place here. The sub-committee which will discuss the timeliness of the question will naturally discuss details of the scheme as well, but its chief object will not be to discuss the principle of the question itself.

Mr. H. O. MANCE (Great Britain). — My proposal is this : We are asked whether we should continue the study of this Resolution or not. We need not decide for two or three days, and in the meanwhile, in order that we may know whether the matter could be completed at one sitting, for example, or whether it would entail a week's discussion, I suggest that those who are interested in the Draft should meet in order to state their views upon it, and then that the chairman of the small informal committee should say whether it was unanimously agreed that the measures were suitable, or that there had occurred certain unimportant technical difficulties which could quickly be removed, or else that it would require a week or two's discussion, or that there were serious mistakes which would prevent the proposal from being adopted. After this little informal preliminary report we should know whether it was worth while pursuing the question here, and what form might be given to the text.

M. HAAS (Secretary-General of the Conference; speaking in French). — I think there is still some misunderstanding. The point before us is whether it is desirable to consider the question of ports in its present form. If I understand aright, there are two kinds of possible reasons why the present time is not opportune, and M. Winiarski and General Mance are not considering the same reasons.

In the first place there may be, if I may say so, an undesirability on principle, and it seems illogical to appoint a Committee of Enquiry before this question has been considered. The question whether it is desirable or not to discuss the matter now must be settled immediately. Then there is another point, and it was rather to this I think, that General Mance desired to draw the Committee's attention, namely, that we may agree as to desirability on principle, but we may consider that there is no time for discussion, and that therefore it is undesirable to deal with the question now. The question as to desirability on principle may be settled, subject to the reservation that, if, after its first meeting, the sub-committee realises that the work is difficult and that there will be no time to complete it, the question will be abandoned.

These two questions must therefore be clearly kept apart. On the one hand the question of desirability should be settled at once and, should this desirability be admitted, a sub-committee should be appointed; then if this sub-committee affirms that the difficulties are too great, the matter should be postponed.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I ask the President to consult the Committee as to whether it deems it desirable to deal with the question of ports.

The CHAIRMAN (speaking in French). — M. Winiarski has stated that he has withdrawn his first proposal. M. Fernandez y Medina then proposes that the Committee should state its opinion as to the desirability on principle of examining the Draft relating to Ports now.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — If the Committee decides in the affirmative, a sub-committee will be appointed. If, on the other hand, it decides in the negative, the matter will be closed.

The CHAIRMAN (speaking in French). — I call upon the Committee to take a decision on the following question which has been put by M. Fernandez y Medina : Does the Committee consider that it is desirable on principle to consider the Draft relating to ports now?

The Committee decided by 25 votes to 5 that it was desirable to consider the Draft relating to Ports.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I ask that the Committee should follow the usual procedure and appoint a sub-committee, and that in nominating the members account should be taken of the various views and qualifications, and not of particular interests.

M. LASSALA (Spain; speaking in French). — The Committee seems to have lost sight of the question which was clearly stated by the Secretary-General. We have decided that it is desirable on principle to consider the question of ports. We must now take a decision as to whether, as General Mance proposes, it would not be better from a practical point of view, in order to waste as little time as possible, to appoint a small committee to examine the question in detail.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — It is for the Committee to decide what form it wishes the sub-committee to take. If it so desires it may even enter upon the general discussion of the Draft at once; I should not object. I simply spoke of the form which the sub-committee should take. I have in mind not a small committee but a sub-committee of the usual kind.

The CHAIRMAN (speaking in French). — If there is no objection we will now appoint a committee composed on normal lines. As regards the composition of the sub-committee, the Officers of the Conference propose the following :

The Delegates of Austria, Belgium, Brazil, Chile, China, France, Germany, Great Britain, Greece, Italy, Japan, Netherlands, Norway, Poland, Portugal, Serb-Croat-Slovene State, Spain and Uruguay.

If there is no objection, this is decided (1).

The meeting adjourned at 7.50 p.m.

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(1) Apart from certain amendments mentioned during the discussion of the articles for which they were respectively proposed, the following counter-scheme to the Draft Resolution was proposed by the Chilian Delegation :

DECLARATIONS AND RECOMMENDATIONS RELATING TO THE INTERNATIONAL REGIME OF PORTS

The Conference declares :

1. That the nationals, property and flags of all nations shall enjoy complete freedom in the use of ports or portions of ports, with or without free zones, placed under the authority of the League of Nations or under an international regime.

2. That the use of the ports, as provided for in the preceding article, as well as dues and charges, shall be based on perfect equality between the nationals, property and flags of all nations.

3. That, in the absence of special provisions, the administration of any ports controlled by the League of Nations or placed under an international régime shall be placed under such authority as may be appointed by the Council or under the authority of the State which exercises its sovereignty or authority in the said port.

4. That the courts of the State which exercises sovereignty or authority in the port shall be recognised as the competent authority in civil, administrative, commercial and penal matters.

5. That the State under the sovereignty or authority of which the port is situated may, in so far as the exercise of national maritime coasting-trade is concerned, treat the port in question in the same way as its other ports.

6. That the provisions are valid in time of war in so far as is compatible with the rights and obligations of belligerents and neutrals.

7. Any disputes as to the interpretation and application of the provisions in question, as well as, in general, all disputes relating to the use of the port, shall be brought, in the first instance, before the International Commission entrusted with the duty of administering the port, if such a Commission shall have been appointed; should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any State may appeal to the Permanent Court of

International Justice under the conditions and according to the procedure which shall be laid down by the League of Nations.

The Conference recommends :

1. That the League of Nations, as regards the ports placed under its authority; and the States which exercise sovereignty or authority over ports subjected to an international régime, should adopt such measures as would ensure :

a. That the subjects, property, and flags of the different States should be treated on a footing of perfect equality, particularly as regards berthing facilities, loading and unloading, and tonnage, harbour, pilotage, light-house and quarantine dues and charges, levied on behalf of and for the benefit of the Government, public authorities, private individuals holding concessions, corporations or establishments of any kind whatsoever. In particular no distinctions shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

b. That there should be no restrictions to the free use of the port, other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations should be reasonable and uniform, and should not unnecessarily impede traffic.

c. That all charges imposed for the use of the port should be levied under conditions of perfect equality, and should be reasonable, and should take into account the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the use of the port and its approaches. The tariff of these charges should be posted up in every such port.

d. That suitable measures should be taken for carrying out works of upkeep and improvement in the ports administered by the State which exercises sovereignty or authority over these ports, should be executed in such a manner as to remove any obstruction or danger to navigation, and to facilitate the carrying out of necessary operations by vessels in the port.

e That measures should also be adopted whereby the State under whose sovereignty and authority the port is situated, should be bound in every case to refrain from undertaking any works liable to prejudice the free use of the port or of the approaches thereto.

2. That all customs, local octroi or consumption duties, levied on imports or exports through a port which is subject to the international regime, should be uniform, irrespective of whether the vessel which has effected, or is to effect, the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on grounds of economic needs these duties shall be fixed on the same basis, and at the same rates, as similar duties applied at the other customs frontiers of the State concerned; and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be similarly accorded to imports and exports through the port subject to the international regime.

3. That the facilities granted for the erection or use of warehouses, and also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the duties provided for in Article 5 of these Recommendations. It shall be within the discretion of the State under whose sovereignty or authority the port is situated, to permit or prohibit manufacture within the free zone.

4. That, in the absence of any special provisions, the State under whose sovereignty or authority the port is situated may not, in connection with the reservation of national maritime coasting-trade, assimilate the free zone of the port to its other ports.

5. That no duties or charges, other than those provided for in Article 1 paragraph *c*) of these Recommendations, shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come, or for which they are destined, other than a statistical duty, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

6. That duties provided for in Article 2 of these Recommendations may be levied, under the conditions established in the said Article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

7. That the disputes of which mention is made in Article 1 of the above Declarations may in cases of urgency be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee, and the Permanent Court of International Justice, having the power without prejudice to the final conclusion, opinion and judgment on the basic cause of the dispute, of pronouncing a provisional conclusion, opinion and judgment to the extent of prescribing any provisional measures designed, in particular, to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

ELEVENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 15th, 1921, at 11 a.m.)

DISCUSSION OF DRAFT RECOMMENDATION SUBMITTED BY SUB-COMMITTEE — APPOINTMENT OF RAPPORTEUR

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF DRAFT RECOMMENDATIONS SUBMITTED BY SUB-COMMITTEE

The CHAIRMAN (speaking in French). — At its last meeting the Committee on Navigable Waterways decided by 25 votes to 5 to consider in principle the regime of international ports. The Sub-Committee formed for this purpose has also considered the desirability of dealing with the question. At the desire of M. Hanotaux, the President, and at the request of several delegations, I agreed to take the chair at the meetings of the Sub-Committee in order to expedite this work. The Sub-Committee held two meetings. By agreement with the Officers of the Conference, it asked M. Haas, our Secretary-General, to make a verbal report at the beginning of this meeting of the Committee.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Sub-Committee examined the Draft Resolution relating to the international regime of ports and drew up a text which was unanimously adopted.

At the beginning a fresh discussion arose as to whether the question of ports should be studied at once or not, and whether it should be studied under the form given to it in the *Green Book* Draft. The Sub-Committee voted in the affirmative, as the Committee had done. This question of principle having been settled, no difficulty arose when the texts came to be examined in detail. None of the amendments which were submitted affected the question of principle; they all aimed either at improving the text or bringing it into accord with corresponding provisions which had already been adopted, particularly in the Convention on Freedom of Transit. In view of the small number of changes introduced into the Draft, I think there is no need for me to explain at length the import of this Resolution, to which there is a commentary in the preparatory work of the Conference (1). I think the best method would be for me to read the text article by article. As each article is read I will state the view of the Sub-Committee upon it, and the work done; the Committee may then, if it wishes, amend the text.

The CHAIRMAN (speaking in French). — If there is no objection to the method of work proposed by M. Haas, we will proceed in the manner which he has indicated.

M. HAAS (Secretary-General of the Conference; speaking in French). — In the first place the British Delegation proposed a change in the title. It asked that the title

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(1) See p. 230.

should be, not *Draft Resolution Relative to an International Regime for Ports,* but *Draft Resolution Relative to Ports to Which an International Regime is Applied.*

The Sub-Committee, however, considering that this change might give rise to differences of interpretation, retained the original title.

The CHAIRMAN (speaking in French). — Is there any objection to retaining the title?

The original title was retained.

M. HAAS (Secretary-General of the Conference; speaking in French). — The proposed Preamble reads as follows : —

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international régime, it being clearly understood that such a regime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

In connection with the Preamble the question arose as to what form should be adopted. The text takes the form of a Resolution, but I think that it should not be kept in this form. In the Scheme of Organisation and the Rules of Procedure of the Conference, the word *resolution* is used only for drafts which are to be submitted later to the Assembly of the League of Nations, and this is not the case here. It would be well therefore to adopt the term *recommendations,* which from the technical point of view is more exact here. Moreover the text of the Preamble accords in every respect with the meaning of the word *recommendations.*

The original text read : — *ports... which may be placed under the authority of the League of Nations, or under an international regime...* The words *under the authority of the League of Nations, or* have been deleted. This is one of the special cases of the general international regime, and this expression was therefore unnecessary.

M. WINIARSKI (Poland; speaking in French). — What will the legal purport of this document be if we substitute the word *recommendation* for *resolution?*

M. HAAS (Secretary-General of the Conference; speaking in French). — In our Scheme of Organisation it is laid down that the work of the Conference may take one of three final forms,—a convention, recommendations or a draft resolution to be submitted to the Assembly of the League of Nations. There is no question here of a convention, nor, I think, is it the intention of the Conference to include this question among those which are to form the subject of a resolution of the Assembly; it does not belong to the immediate sphere of action of the League of Nations. It can therefore be submitted only in the form of recommendations. Moreover, if the Conference adopts this text it will be a recommendation which it will make to those States which are to apply an international regime, and not a general recommendation to States for all their ports.

M. WINIARSKI (Poland; speaking in French). — If the text took this form, then, would a resolution have no force until it had been approved by the Assembly of the League of Nations?

M. HAAS (Secretary-General of the Conference; speaking in French). — In accordance with the Rules of Procedure, the Conference may adopt whatever resolutions it pleases, but hitherto such decisions as have been taken by the Conference have, from the technical point of view, been called recommendations. The word *resolution* must be reserved for cases in which the internal organisation of the League of Nations is concerned, such as, for example, if the Council or the Assembly of the League of Nations had asked a Conference such as ours to prepare a resolution for it; that is not so here.

M. WINIARSKI (Poland; speaking in French). — If we adopt the form of recommendations, such recommendations become *ipso facto* an act of the League of Nations. The Polish Delegation considering that this is not the proper time for this Draft Resolution, and that in certain circumstances it may prove a very dangerous one, has stated that it will vote against it. Its attitude cannot be modified by the fact that the resolution has been transformed into recommendations. The Polish Delegation will not take part in the discussion of this Draft; it reserves the right to speak when the Draft is submitted to the plenary conference.

M. POLITIS (Greece; speaking in French). — The word *recommendations* would be desirable if we were dealing only with one category of ports,—that is to say ports which each State voluntarily placed under the international regime. But there are ports which, in virtue of the clauses of the Treaty of Peace, are compulsorily placed under the international regime. Moreover, if a State voluntarily places one of its ports under the international regime, it is obliged to conform to these recommendations. From that time this document ceases to have the character of recommendations and becomes a statute.

M. HAAS (Secretary-General of the Conference; speaking in French). — But not until then. The technical meaning of the expression is akin to that given to it in Article 405 of the Treaty of Versailles in respect of the organisation of labour. It is not a *vœu*.

M. POLITIS (Greece; speaking in French). — You allude to Article 405. In that case there was a reason for adopting the word *recommendation;* the recommendation with regard to labour was not concluded between States alone, but between States and other organisations such as the labour organisation, syndicates and so on; whereas a Convention cannot possibly be concluded between States and syndicates or labour organisations. The jurists tell me that it is for this reason that the word *recommendations* was used; we ought not to argue, however, from the point of view of Article 405.

M. HAAS (Secretary-General of the Conference; speaking in French). — If a better word than *recommendations* is found, I shall not object to it. We could put nothing at all, which would be even simpler.

M. POLITIS (Greece; speaking in French). — We could put *standard statute.*

M. DETŒUF (France; speaking in French). — But we should specify that there is nothing obligatory.

M. POLITIS (Greece; speaking in French). — Of course.

M. DETŒUF (France; speaking in French). — M. Politis has said that ports placed under an international regime would be compulsorily subjected to the provisions of our statute. I think that would certainly be exceeding the intentions of the authors of the Draft. There is no question of an obligatory statute; the assent of the States concerned would have to be obtained in order to transform these recommendations into a statute.

M. POLITIS (Greece; speaking in French). — I think that is not the question.

M. HAAS (Secretary-General of the Conference; speaking in French). — It is a statute which is recommended to the notice of the Governments; it was in this sense that I used the word *recommendations.*

The CHAIRMAN (speaking in French). — We have assembled and studied this question, and we recommend, in the ordinary sense of the word, that this standard statute should be taken into consideration whenever a port subject to an international regime is created anywhere either in virtue of special agreements or simply of a decision.

M. POLITIS (Greece; speaking in French). — When a State once agrees to place one of its ports under an international regime, it binds itself to apply this statute.

M. HAAS (Secretary-General of the Conference; speaking in French). — The question really arises only in theory. When a State consents to apply the international regime to any port, it will not merely say in a general way, "I intend to apply the international regime"; it will say, "I am applying to such and such a port a regime provided by the recommendations issued by the League of Nations".

M. DETŒUF (France; speaking in French). — ...or some other regime. States will always reserve the right to place a port under an international regime which will not necessarily be exactly the same as that provided in this Convention.

M. POLITIS (Greece; speaking in French). — Will this statute be compulsorily applied to a port placed under international regime in conformity with the Treaty of Peace?

M. HAAS (Secretary-General of the Conference; speaking in French). — As far as I know there are no such ports. In a large number of ports named in the Treaty of Sèvres a regime obtains which is practically the same, but which is not derived from a text such as this. It is a regime which does not conform to the amendments which we have made, but which, apart from certain changes, has a similar text.

The CHAIRMAN (speaking in French). — The question of administration is not mentioned in the Treaty of Sèvres. The authors of that treaty considered the standard statute very carefully, but did not blindly conform to it. They took what was good in the text, and I think that this will always be done by States when creating international ports. I think that M. Detœuf has summed up the spirit of the text very lucidly.

M. POLITIS (Greece; speaking in French). — I am now clear on the point. In the case to which I refer this statute is not obligatory.

M. VELASQUEZ (Paraguay; speaking in French). — It is clear from the text of the Preamble that there is no question of a Convention here; as far as I can see the text does not state whether it is to be recommendations or a resolution. I think that the following words should be included in the text :—*...recommends nevertheless that the following provisions should be applied.*

The CHAIRMAN (speaking in French). — You are quite right, and the text will be modified as you suggest.

M. LASSALA (Spain; speaking in French). — At the end of the text it is stated that *the State under whose sovereignty or authority...* I think we should put *the consent of the States under whose sovereignty or authority...*

M. HAAS (Secretary-General of the Conference; speaking in French). — It is certainly possible for two States simultaneously to exercise sovereignty over a port.

The CHAIRMAN (speaking in French). — Has anyone any further observations to make on the Preamble? The final text will therefore read as follows :—

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, recommends that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports with or without free zones, which may be placed under an international regime, it being clearly understood that such a regime can only be applied in consequence

of a special act involving, in particular, the consent of the State or States under whose sovereignty or authority the said port might be situated.

I put this text to the vote.

The text of the Preamble was adopted.

ARTICLE 1

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I will read Article 1, which comes under the heading *General provisions.*

Freedom to use the Port and Equality of Treatment.

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration or the import or export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

Article 1 was adopted.

ARTICLE 2

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The Italian Delegation pointed out that the second paragraph contained the following words :—*Subject to the provisions of Articles 8, 10, 11 and 12* and that there was no need to mention Article 12. The reference to it was therefore deleted, as this article does not establish any due, but merely refers to the stipulations laid down in other articles.

The text of Article 2 now reads as follows :—

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 2 was adopted.

ARTICLE 3

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation proposed to substitute for the words *suitable measures* the words *such measures as lie within its means.* The British Delegation proposed to omit the words *and improvement* in the title, and in consequence of the British amendment the Portuguese Delegation withdrew its amendment. The title alone therefore was altered; and in any case it should have been *works of upkeep,* because the text only mentions works of upkeep.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Will the words *and improvement* be left in the text?

M. DETŒUF (France; speaking in French). — I think these words may be entirely omitted; upkeep includes improvements.

M. POLITIS (Greece; speaking in French). — If this is to be a recommendation, we cannot say *it shall be the duty...*

M. HAAS (Secretary-General of the Conference; speaking in French). — Our intention is that it should be possible to take our text and embody it in a unilateral act or a treaty. We are therefore obliged to make use of the legal form, but we leave everyone free to accept our text or not.

M. DETŒUF (France; speaking in French). — If we were to say in our Preamble, "I undertake to observe this statute", the question would certainly become clear; but we prefer the form of recommendations.

M. POLITIS (Greece; speaking in French). — You said just now that a State, when establishing an international regime for a port, need not necessarily accept the regime indicated by you.

M. DETŒUF (France; speaking in French). — That is understood, but if the State accepts our regime it is obliged to apply the statute.

The CHAIRMAN (speaking in French). — If no-one else asks to speak I will put the text of Article 3 to the vote. It reads as follows :—

ARTICLE 3

Works of Upkeep.

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation, and to facilitate the carrying out of the necessary operations by vessels in the port.

Article 3 was adopted.

ARTICLE 4

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation proposed an alteration, the object of which was to make it easier to adopt this regime voluntarily by allowing works to be undertaken which were considered by the State to be calculated to facilitate the use of the port, subject, however, to the option of suspending such works if they prejudice the facilities for the use of the port (1).

The Italian Delegation proposed an amendment for the purpose of bringing this text into accord with the provisions of the Convention on Freedom of Transit and the Convention on Navigable Waterways, in connection with the safety of the State, and so on (2).

The Sub-Committee therefore drew up the following text, which takes both these amendments into account :—

Works Dangerous to the Use of the Port.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be

(1) The amendment of the Portuguese Delegation is as follows :—
New text of Article 4 : —
"The State under whose sovereignty or authority the port is situated may undertake all works which it considers calculated to facilitate the use or accessibility of the port. Works thus undertaken may not be suspended unless it is proved that they are likely to interfere with the facilities for using the port or with the approaches thereto."

(2) The amendment of the Italian Delegation was as follows :—
Add at the end of the article :—
"It shall, however, be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to remove obstructions or dangers to navigation."

obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to avoid obstructions or dangers to navigation.

M. KRBEC (Serb-Croat-Slovene State; speaking in French). — Are we to keep the titles of the Articles? In the Convention on Transit it was proposed to omit them. If they are kept, we must change the title of Article 4, as it no longer deals only with dangerous works. The first sentence contains a positive provision empowering a State to undertake works of improvement.

The CHAIRMAN (speaking in French). — The question is whether the titles of all the articles will be deleted.

M. HAAS (Secretary-General of the Conference; speaking in French). — All the titles of the articles might be omitted and only the titles of the chapters and the sections be retained. This is what has been done elsewhere.

The CHAIRMAN (speaking in French). — M. Krbec thus receives satisfaction. The titles of the articles will be omitted. If there are no further remarks on Article 4 I will put it to the vote.

Article 4 was adopted.

ARTICLE 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 5 was adopted.

ARTICLE 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

Article 6 was adopted.

ARTICLE 7

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

M. HAAS (Secretary-General of the Conference; speaking in French). — Article 7 resulted in a somewhat lengthy debate in which the question arose of a standard type of statute for ports. The Japanese Delegation proposed the omission of this article, which allows national maritime coasting trade subject to the special regime for free zones. If Article 7 were omitted, the result would be no longer to allow the territorial State to include in the standard statute a provision reserving coasting trade for itself. In connection with this article the Japanese Delegation also proposed that a special Convention should be concluded consisting of one article only, which I will read :

Each of the Contracting States undertakes to recognise to the flags of the other Contracting States, subject to reciprocity, the right of maritime coasting trade in their respective territorial waters.

A long discussion took place. It became apparent that a majority of States would not be able to agree to the Japanese amendment to Article 7. The Japanese Delegation then withdrew the amendment.

As regards the Convention composed of a single article, which gave rise to the general discussion of the reservation of maritime coasting trade, many of the delegations pointed out that they could not possibly accede to such a Convention. Moreover, certain delegations raised the objection that this question was not one upon which they had

received instructions, and that therefore it did not appear possible to consider it here and now. In these circumstances the Japanese Delegation considered that it could no longer press the point, and that the attention of the Governments would be drawn to this question, which was of particular concern to them by the very fact that it had been raised here and that it could not be considered, as the delegations had no instructions in the matter. In these circumstances Article 7 was adopted without change.

The CHAIRMAN (speaking in French). — I think the Committee agrees that this article shall be retained.

Article 7 was adopted.

ARTICLE 8

All customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime must be uniform, irrespective of whether the vessel which effected or is to effect the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, the customs duties shall be those of the tariffs applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation moved an amendment as follows :—

Customs Duties may be reduced when it is a question of importation or exportation of goods produced by the State having sovereignty or authority in the port, and originating in or destined for another port of the same State.

After explanations had been given as to the meaning of Article 8 the amendment was withdrawn. The Italian Delegation pointed out that the text could not possibly be kept in its existing form and that the words *excepting accessory expenses in connection with the operations of supervision and administration* would have to be added after the word *duties*.

The British Delegation also moved a purely formal amendment to insert the word *customs* befort the word *duties*.

Article 8 was adopted by the Sub-Committee with the text which the President has read.

M. KRBEC (Czecho-Slovakia; speaking in French). — In Sub-Committee I moved a suggestion that we should adopt as far as possible the same terms as those of the Convention on Navigable Waterways, but as the Sub-Committee had not this text before it, we referred the question to the Committee. I propose that where *customs duties* are in question, we should state that such customs duties shall not be higher than those levied at other customs frontiers. The text would thus be more logical and more elastic.

M. HOSTIE (Secretary-General of the Conference; speaking in French). — The texts of the Navigable Waterways and that of the Ports were identical in the *Green Book*. The Waterways text has been very considerably changed, particularly as a result of the amendment by the French Delegation. The Ports text was slightly amended also, more especially with a view to taking into account certain Italian proposals. From the logical standpoint, and as far as the good appearance of our text is concerned, it would be a pity not to adopt here the Waterways text, as M. Krbec proposes. Nevertheless I have some slight scruple, because the Italian amendment would no longer be completely safeguarded. The wisest course would be therefore simply to adopt the Waterways text and to ask the Italian Delegation to consider the question on the basis of this text, and perhaps to propose an amendment to the wording which would have become common to the two texts, for the time when we can finally adopt the Waterways text.

M. POLITIS (Greece; speaking in French). — Could you explain the difference in a few words? I supported the amendment the other day.

M. HAAS (Secretary-General of the Conference; speaking in French). — Here is the corresponding Waterways text :—

3. In the application of customs or similar duties levied on imports and exports through the said ports, no difference shall be made by reason of the flag flown by the vessel carrying, or to carry, the goods, whether it be national or belonging to any one of the High Contracting Parties.

4. The State under whose sovereignty or authority a port is situated may withdraw the benefit of the preceding paragraph from any vessel, if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

5. In the absence of special circumstances which would adequately justify an exception from this provision, on account of economic necessity, these dues must not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State.

All the facilities which may be accorded by the High Contracting Parties, on other land or water routes, or in other ports, for the imports and exports of goods, shall be equally accorded to imports and exports under the same conditions by the navigable waterway and the ports referred to above.

M. POLITIS (Greece; speaking in French). — You make no distinction between customs dues properly so-called and accessory expenses. We wished, as did M. Sinigalia, to lay stress upon the fact that customs dues are the same whatever the frontier may be, but that accessory expenses may not be the same.

M. HAAS (Secretary-General of the Conference; speaking in French). — In the Waterways text, the word *octroi* has disappeared and we now speak only of *customs or similar duties.*

M. POLITIS (Greece; speaking in French). — Customs dues should be the same everywhere, whereas octroi duties may be, and in fact actually are, different.

M. HAAS (Secretary-General of the Conference). — The simplest way would be to return to the Waterways text, but with certain specifications. Instead of *for the application of customs or similar dues* we should say *for the application of customs, local octroi or consumption duties and accessory charges.* In the second sentence we should say *in the absence of special circumstances... the customs duties may not be higher than...* Thus the two Italian amendments will be safeguarded and the rest will be the same.

H. DETŒUF (France; speaking in French). — Our customs expert has no objection with regard to local octroi.

M. POLITIS (Greece; speaking in French). — There is no case in which the duty can be higher.

M. HOSTIE (speaking in French). — It would be better to revert to the Waterways text, which is more elastic. Have you any objection to retaining here, in order to avoid any difficulty as regards the Italian amendment, the words *customs, local octroi and consumption duties?* As we are concerned merely with a standard type of statute, another formula can always be used in actual practice.

M. DETŒUF (France; speaking in French). — I have no objection as regards the standard statute, but only as regards the effect on the Waterways Convention.

The CHAIRMAN (speaking in French). — There is no effect.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In our country, there is an additional import duty similar to customs dues. The words *similar* and *consumption duties* might therefore be left.

M. DETŒUF (France; speaking in French). — I have no objection to the words *customs, local octroi... dues.*

H. HOSTIE (speaking in French). — We are all agreed. In the first part we will put *all customs, local octroi and consumption duties and also accessory expenses levied on imports and exports.*

The CHAIRMAN (speaking in French). — Is the Committee of opinion that these words should be kept? We will refer the text of Article 8 to the Drafting Committee.

ARTICLE 9

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation submitted an amendment to Article 9, to add the works *the facilities of the free zone being capable of extension only to a limited number of products.* After explanations on both sides this amendment was withdrawn.

The British Delegation proposed to add at the beginning of the article the words *The area of the free zone, unless otherwise stipulated and...* The scope of this amendment is wide; it enables the extent of the free zone to be fixed in the standard statute itself, whereas the intention had always been that the extent of the free zone, like that of the port placed under an international regime, should actually be determined, either invariably or variably, in the act placing the port in question under an international regime, whether with or without a free zone. In these circumstances, the original text was adhered to, in order that the standard statute should retain its character. That part of the text which deals with free zones is of the same character as the rest of the text; that is to say, the stipulations contained therein are intended to come into application wherever there are free zones, but without any statement as to the conditions or limits to be applied to the free zones.

Article 9 was therefore adopted in its original form.

The British Delegation also proposed to add to the end of this article the words *but such permission or prohibition must apply equally to the nationals of all countries.* There seemed a certain risk in inserting this amendment at the end of the article, not on account of any lack of unanimity on the subject of this interpretation, but because it was feared that if the condition regarding equality, upon which the whole text is based, were categorically stated in any one particular instance, the inference might be drawn that, *a contrario,* equality would not be imposed in the same conditions in other cases.

Opinion was thus unanimous as regards the view held by the British Delegation; but for this very reason the Sub-Committee decided that the matter should be simply mentioned in the Report as a completely unanimous interpretation of the meaning of this article and indeed of all the other articles of the Ports text, as it would be both useless and dangerous to make it the subject of a provision.

The CHAIRMAN (speaking in French). — As no-one has any further remarks to make on Article 9, I will put it to the vote.

Article 9 was adopted.

ARTICLE 10

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

M. HAAS (Secretary-General of the Conference; speaking in French). — Article 10 has been retained in its original form. The Serbian Delegation proposed the following amendment :—*Article 10 lays down that in free zones, coasting trade cannot possibly be reserved save as an exception.* The Serbian Delegation asked for the word *not* to be omitted; it proposed to adopt as a principle the possibility of reservation, save as an exception. In practice this amounts almost to the same thing, as the question will have to be settled anew for each separate port.

The Sub-Committee decided to retain the original text, as it considered that the question did not arise under the same aspect for free zones, and for zones which are not free, of ports placed under the international regime; in many cases it is quite possible that when a port placed under an international regime is free, or when part of the port is free, it may perhaps be necessary to safeguard the imports and exports of a neighbouring country either in pursuance of a treaty or if the State so decides. Consequently the facilities for navigation in this free part must not be limited, as they may be absolutely essential to the full development of the imports and exports of the country.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would ask the Chairman to put this amendment to the vote. We consider that the question is not so simple as it appears; it does not satisfy the States under whose authority the port is placed.

The CHAIRMAN (speaking in French). — The issue is clear. The Sub-Committee rejected the Serbian proposal by 9 votes to 6.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We ask for the word *not* to be omitted. Article 10 would then read as follows :—*...the State under whose sovereignty or authority the port is situated may, in case of...* I think this change is a very just one, It leaves the countries the right of discussion with the State under whose authority the port is situated. I ask the Chairman to put this amendment to the vote.

M. HAAS (Secretary-General of the Conference; speaking in French). — We may vote on the Serbian amendment to omit the word *not.* I think that in Committee a majority vote alone is always sufficient, and that there is no need to secure a two-thirds majority.

The CHAIRMAN (speaking in French). — This was in fact decided at the first two meetings of the Committee of which I have the honour to be Chairman. It is in these conditions, then, that I will put the amendment of the Serb-Croat-Slovene Delegation to the vote.

The amendment was adopted by 18 votes to 9.

ARTICLE 11

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem.*

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — A discussion arose regarding the nature of the basis of the statistical duty, and the Italian Delegation proposed to add at the end of the article the following text :—*should the value of the goods be unknown, the statistical duty shall be based on the weight.* It appeared that the text could not be drafted in such a way as to imply the obligation

to levy dues *ad valorem*. For this reason the text was drafted in the form which has been read to you.

The CHAIRMAN (speaking in French). — I put Article 11 to the vote.

Article 11 was adopted.

ARTICLE 12

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

Article 12 was adopted.

ARTICLE 13

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — A few slight changes have been made in this article in order to make it uniform with the Transit text.

The CHAIRMAN (speaking in French). — These are only formal changes. I put Article 13 to the vote.

Article 13 was adopted.

ARTICLE 14

These stipulations do not prescribe the rights and obligations of the belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit.

Article 14 was adopted.

ARTICLE 15

This Statute does not impose upon any of the Contracting States any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 15 was adopted.

ARTICLE 16

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members in the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

Article 16 was adopted.

The CHAIRMAN (speaking in French). — At the close of the meeting of the Sub-Committee, the British Delegate made a general proposal which raised a somewhat important legal point. We therefore reserved the consideration of this question for the Committee to-day.

Mr. COLVIN (Great Britain). — The Committee will remember that at the close of the second meeting of the Sub-Committee on Ports, the following British amendment was discussed :—

The State under whose sovereignty or authority the port is placed cannot relieve itself of the obligation to ensure that effect is given to the foregoing articles, by any arrangement that it may conclude under which it delegates any part of its authority over the port to any other State, body or person.

Although no decision was arrived at, a certain amount of discussion took place, in the course of which I gathered that the Officers of the Conference were inclined to think that there was no real necessity to insert this amendment in the Ports document itself. I need hardly say that the British Delegation attaches very great importance to the opinion of the Officers of the Conference, and I have therefore taken the opportunity of consulting further with M. Haas. As a result of this discussion, I would like to make the following statement :—

The British amendment was considered necessary in view of the passage in the *Green Book* (1) which might be interpreted in the sense that a State would have the right to transfer its obligations under the Ports Resolution to a concessionnaire, whether a private body or person or another State with whom it would conclude an arrangement to delegate its authority. The true doctrine is, clearly, that if a State has contracted an obligation to apply the Ports Recommendations, it is for that State, should it have delegated its authority, to ensure that the concessionnaire will fulfil the obligations undertaken. If this principle is recognised by a suitable passage in the Report, the British Delegation will not press its amendment.

I am happy to say that M. Haas has informed me that he sees no objection to the adoption of this latter proposal, and I trust it will also meet with the approval of this Committee.

The CHAIRMAN (speaking in French). — You have heard the British view stated. I think M. Colvin's case is so clear that we all agree with him. The question of sovereignty and the transfer of sovereignty is a fundamental one for all our Conventions which involve territorial questions. My view is therefore that this statement should be inserted in the Report, because the conception of sovereignty and the transfer of sovereignty should be made perfectly clear. I would also remind the Committee of the passage in the *Green Book* which defines the view of the Paris Commission on this question (2).

I think, therefore, that no objection will be raised to the request of the British Delegation, and on your behalf I will recommend the Secretariat to mention this statement in the Report.

The great moment has now arrived for the Committee to take its decision on the Draft Recommendations as a whole. I am glad to note the moral agreement which exists.

I will put to the vote the Draft Recommendations as a whole.

The Draft Recommendations were adopted by 27 votes to 1.

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(1) See p. 231.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 286.

This passage, which occurs in the Report on the Draft Convention on Freedom of Transit, reads as follows :—

PREAMBLE. — The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application. Where, for example, sovereignty and authority are apportioned between different States, as a result of "settlements", which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

APPOINTMENT OF RAPPORTEUR

The CHAIRMAN (speaking in French). — On behalf of the Officers of the Conference I venture to propose that our esteemed colleague, M. Fernandez y Medina, be asked to prepare the Report which the Committee will submit to the Plenary Conference. M. Fernandez y Medina has taken a very active part in our proceedings in connection with ports; those who were present at our last meetings will remember the clearness of view evinced by him during the discussion, and the enlightenment which we derived from his speeches. The Officers of the Conference will be very pleased if the Committee appoints M. Fernandez y Medina as Rapporteur. Your applause renders it needless for me to put the proposal of the Officers of the Conference to the vote.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — I wish to thank the Chairman and the Officers of the Conference for the honour which they have done me, and also my colleagues on the Committee for the welcome which they have accorded to the Chairman's proposal. I shall fulfil my task with the greatest impartiality; I rely above all on the co-operation of our competent and devoted Secretary-General, M. Haas (1).

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The meeting adjourned at 12.50 p.m.

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(1) The rest of the meeting was devoted to the reading of the Report of the Sub-Committee on Navigable Waterways (See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern*, p. 227.

TWENTY-SIXTH MEETING OF THE CONFERENCE

(Friday, April 15th, 1921, at 6 p.m.)

REPORT ON DRAFT RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME FOR PORTS
DISCUSSION OF RECOMMENDATIONS

The meeting opened with M. Hanotaux, President, in the Chair (1).

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REPORT ON DRAFT RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME FOR PORTS

The PRESIDENT (speaking in French). — We now enter upon the question of ports. M. Fernandez y Medina, Rapporteur, will read you his Report. I call upon him to speak.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The Conference decided to refer to the Waterways Committee the question of the Draft Resolution relative to the International Regime for Ports. This Committee had to examine not only the actual text of the Draft submitted, but also a question of principle, namely, whether it was desirable at the present time to examine the question of ports even in the form of a resolution or recommendation. The Polish Delegation had raised this question at the plenary meeting. The Waterways Committee, after discussion, decided by 25 votes to 5 that the time was not inopportune to consider this question in principle, and instructed a Sub-Committee to draw up a draft text. This was approved by the Waterways Committee by 29 votes to 1. It does not appear to me necessary to make any lengthy remarks on this subject. The Conference will find that the text submitted to it contains very few deviations from the *Green Book*. A fairly large number of amendments, however, were put in, and the most of them were considered. They did not touch the question of principle; they were merely slight improvements, most of which were considered advisable; they were mainly intended in some cases to render the regime more flexible, in order to make the voluntary adoption of the Draft as easy as possible, and in particular to bring the provisions of the Draft into accord with those already adopted for the Conventions on Transit and Waterways.

During the discussion some remarks were made which the Committee decided to introduce into its Report. On the subject of Article 9 the British Delegation feared that the last phrase of this article, *it shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture in the free zone,* might cause it to be thought that this authorisation might be given or refused by a State for motives which were not in conformity with the general principle of equality between the nationals of all States. The British Delegation proposed an amendment on this subject. It was considered preferable not to insert any amendment, although the idea of the British Delegation was unanimously accepted. But the Committee thought that the terms of Article 1 relating to equality applied to all

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(1) The first part of this meeting was devoted to the discussion of the Recommendations relative to Railways. (See p. 141.)

the provisions of the text, and that in order to avoid any possible error, it was greatly preferable to refer to it only in some of the provisions.

The British Delegation also proposed the following additional Article :—*The State under whose sovereignty or authority the port is placed cannot relieve itself of the obligation to ensure that effect is given to the foregoing Articles by any arrangement that it may conclude under which it delegates any part of its authority over the port to any other State, body or person.* This amendment was considered necessary by the British Delegation as a result of the passage in the *Green Book* which might be interpreted in the sense that a State would have the right to transfer its obligations in regard to the Resolution on Ports to a concessionnaire, whether a private individual or another State, with whom it might come to an agreement with a view to delegating its authority to it. The Committee was of opinion that an article of this nature was out of place in the text; but it unanimously agreed with the British Delegation that such an interpretation would be erroneous, and that the true doctrine of international law would here apply, according to which the obligation as between States signatories to a Convention setting up the present international regime in a port should remain on the State in whose territory the port is situated, and that that State, if it makes any arrangement to delegate its authority, should still have the duty of ensuring that the concessionnaire fulfils the obligations undertaken. It was decided to insert this interpretation in the Report, and on these conditions the British Delegation withdrew its proposal.

In conclusion, I would point out to the Conference that during the discussion of this scheme, a fairly lengthy debate arose on the subject of maritime coasting trade. The Japanese Delegation proposed a Convention consisting of a single article dealing with this question. The Committee was of opinion that the question of maritime coasting trade in general was not among those covered by the instructions given to most the delegations, and in these circumstances the Japanese Delegation did not press its proposal. The question of maritime coasting trade was considered, then, only in connection with Articles 7 and 10, relating to the reservation of maritime coasting trade in ports placed under the international regime or in the free zones in those ports. One of these articles was adopted as it stood by 18 votes to 9, following an amendment submitted by the Serb-Croat-Slovene Delegation to admit the principle of reservation of maritime coasting trade even as regards the free zones. The Sub-Committee on Ports had previously registered a vote to the contrary by a majority of 9 to 6.

The Conference is now called upon to examine the text which is presented to it in the form of Recommendations. In accordance with the Scheme of Organisation for the Conference it is not, in the strict and technical sense of the word, a resolution which is here being dealt with,—it is recommendations. If the Conference adopts this text it will recommend a standard type of statute for ports submitted to the international regime, to such States as may, should occasion arise, think fit to apply it by means of a special act.

The PRESIDENT (speaking in French). — I thank M. Fernandez y Medina for his clear and concise Report. We will now read the text as adopted by the Committee, but before reading it, I will call upon the Delegate of Poland to make a statement.

M. WIELOWIEYSKI (Poland; speaking in French). — During the discussion in the Commission of Enquiry on the Draft Resolution on the International Regime of Ports, the Polish Delegation, together with several other Delegations, considered that the desirability of such a Resolution was not sufficiently evident. In spite of this conviction the Polish Delegation took part in the discussion, which all the delegations then considered as of a purely theoretical nature. Our Delegation adhered to its policy, and, being of opinion that no subsequent fact had arisen to justify the present consideration of this question by an International Conference, proposed, at the time when the question appeared on the Agenda of the Conference, to postpone consideration of it to a subsequent date, when the right time should come for so doing. The discussion in Committee and in Conference did not convince the Polish Delegation either of the utility or of the desirability, in present circumstances, of an international act which, even though only in the form of Recommendations, should pledge the high authority of the League of Nations.

For these reasons, the Polish Delegation, to its great regret, cannot conscientiously vote for the proposed Resolution, and reserves to its Government full freedom of action on this subject.

The PRESIDENT (speaking in French). — This statement will appear in the Records.

DISCUSSION OF RECOMMENDATIONS — PREAMBLE

Sir Cecil HURST (Chairman of the Jurists' Committee; speaking in French). — The Jurists' Committee desires to draw the attention of the Conference to the title which has been adopted for these recommendations. It seems to us that this title is not altogether accurate.

The Preamble lays down clearly that the text refers only to ports placed under an international regime, and that there is no question of an international regime for all ports. We did not venture to make this alteration, because when we informed the Committee of the fact, there was some opposition to such an alteration.

The PRESIDENT (speaking in French). — We might say : *recommendations relative to ports placed under an international regime.*

M. ORTUÑO (Spain; speaking in French). — Why not say *regime of international ports,* which would be shorter?

The PRESIDENT (speaking in French). — No, because it is the regime which is international, and not the ports. If there is no objection, the title will then be : *recommendations relative to ports placed under an international regime.*

This was decided.

I have to propose to you two or three slight alterations of form. After the words, in the French text, *recommende cependant* the word *que* should be transferred to the next line.

M. POLITIS (Greece; speaking in French). — It was decided this morning to use the words *the consent of the State or States.*

Sir Cecil HURST (Chairman of the Jurists' Committee; speaking in French). — That is quite true: this morning the words *the consent of the State or States under whose sovereignty or authority the said port is situated* were added to the last sentence of the Preamble. There are in the whole world only two ports placed under a condominium, and the jurists were of opinion that in this case the singular includes the plural and that no alteration was necessary.

The PRESIDENT (speaking in French). — That is true for legal texts. The text of the Preamble will therefore read as follows :—

The General Conference on Freedom of Communications and Transit, while considering that the moment has not yet arrived for the conclusion of a General International Convention on the Regime of Ports, is nevertheless of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime; it being well understood that such a regime can only be applied in consequence of a special act involving the consent of the State or States under whose sovereignty or authority the said port is situated.

The Preamble was adopted.

ARTICLE 1

The PRESIDENT (speaking in French). — We now pass to Article 1 of Chapter I : *General Provisions.*

The nationals, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated in this connection and in all respects on a footing of absolute equality, particularly as regards berthing, loading and unloading, facilities and tonnage, harbour, pilotage, lighthouse, and quarantine dues, levied in the name and for the profit of the Government, public authorities, private individuals or companies, corporations or establishments of any kind. In particular, no distinction shall be made between the nationals, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions on the free use of the port other than those arising from stipulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such stipulations must be reasonable and uniform and must not impede traffic without good reason.

Article 1 was adopted.

ARTICLE 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or to expenditure incurred in the interests of the users of the port or its approaches. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 2 was adopted.

ARTICLE 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any danger or obstacle to navigation and to facilitate the operations of vessels in the port.

M. PIERRARD (Belgium; speaking in French). — Would it not be possible to add after the word *remove* the words *as quickly as possible*, as we did in the Convention on Navigable Waterways?

The PRESIDENT (speaking in French). — There is of course no objection. If there is no opposition we will add the words *as quickly as possible.*

This was decided.

M. NEUJEAN (Belgium; speaking in French). — Instead of *éloigner* it would be better to put *écarter* (1).

The PRESIDENT (speaking in French). — We will say :—*Écarter le plus rapidement possible tous les dangers ou obstacles à la navigation;* we mean here material obstacles such as sunken barges or sand blocking the channel.

I put to the vote Article 3 as amended.

Article 3 was adopted.

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(1) No change in English text.

ARTICLE 4

The PRESIDENT (speaking in French). — I will now read Article 4.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or of its approaches. It shall only be bound to suspend them if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence care being taken as far as possible to avoid dangers or obstructions to navigation.

Here the word *obstructions* must be used.

M. LANKAS (Czecho-Slovakia; speaking in French). — This article has often been changed, and the first paragraph should be drafted differently. We should say :

The State under whose sovereignty or authority the port is placed may undertake all works for upkeep and improvement and shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port.

We must not repeat the same thing in the first and second sentences of the article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As this first sentence was drafted at the instance of the Portuguese Delegate, is this an opportune moment to reopen the matter?

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The idea has been left intact; the works which facilitate the use of the port are works of upkeep and improvement.

M. CARACOSTEA (Roumania; speaking in French). — And what about dredging?

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — It is included under works of upkeep.

M. STIEVENARD (Belgium; speaking in French). — Upkeep has already been dealt with in Article 3.

The PRESIDENT (speaking in French). — That is not the same idea. The text must be redrafted as follows :—

The State under whose sovereignty or authority the port is situated may undertake all works for upkeep and improvement of the port or of its approaches. It shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid dangers or obstructions to navigation.

M. MIDHAT FRASHERI (Albania; speaking in French). — The text here is contradictory; it speaks of works intended to facilitate the use of the port, and at the same time there will be no obligation to suspend such works unless it is proved that they are calculated to prejudice... The second sentence must be so worded that it will not be possible to undertake works calculated to prejudice the facilities for using the port, and no mention must be made of the suspension of works.

The CHAIRMAN (speaking in French). — M. Lankas' wording strengthens the Committee's text.

M. PIERRARD (Belgium; speaking in French). — Do the words *territorial defence* mean defence against an enemy, or the protection of land against inundation?

The PRESIDENT (speaking in French). — I have always taken it to mean territorial defence from the military point of view. Otherwise we should say :—from the point of view of protection of the soil, of the land or of the banks. I think we must keep the text of Article 4 as it is, and I now put it to the vote.

Article 4 was adopted.

ARTICLE 5

The PRESIDENT (speaking in French). — I will read Article 5.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 5 was adopted.

ARTICLE 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

M. BIGNAMI (Italy; speaking in French). — Have the legal advisers not considered that there may be discrepancies between Articles 6 and 16? Article 6 speaks of the competent jurisdiction of the State concerned, whereas Article 16 states that any dispute shall be brought before the Permanent Court of International Justice.

The PRESIDENT (speaking in French). — The questions are not the same.

Sir Cecil HURST (Great Britain). — The question was not examined by the Committee of Jurists at their meeting, but since the meeting conversations have taken place between the members of the Legal Section of the Secretariat and a member of the Committee. The former were not sure whether the fears expressed by M. Bignami might not be well-founded, but as far as I am concerned the difficulty does not exist. Article 6 deals with civil litigation, and also with infractions of regulations, whereas Article 16 deals with litigation between States concerning the interpretation or application of the present Recommendations. It is possible that there may be disputes between States with reference to some particular matter, but the case will then be brought before an International Court. There is, therefore, no discrepancy.

The PRESIDENT (speaking in French). — Are there any other comments on Article 6? I put it to the vote.

Article 6 was adopted.

ARTICLE 7

The PRESIDENT (speaking in French). — I will read Article 7.

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I wish to make a proposal with a view to enabling a unanimous conclusion to be reached on a question which otherwise will, I am afraid, divide the Conference, as it has already divided the Committee on Navigable Waterways. I propose to omit Article 7 and also Article 10, and to insert a New Article at the end of Chapter I, which would become Article 7. This article would read as follows :

The question of the regime to be applied to national maritime coasting trade is not dealt with in the present regulations.

If that meets the general views of the Conference, it will avoid the necessity for a long discussion on the merits of the question, in view of the position—which seems to

us a very serious if not a ridiculous one—to which the Waterways Committee was brought as a result of the amendment submitted to Article 10. At this late hour I have no wish to argue the question of merits, but I see great advantage in abolishing both the articles which refer to national maritime coasting trade; this would be in conformity with our general practice of not dealing with maritime navigation in the present Conference.

M. ADATCI (Vice-President; speaking in French). — I am very pleased with the proposal which has been made by the British Delegation. As Vice-President of the Conference and Chairman of the Committee on Navigable Waterways and Ports, I was greatly concerned with this question, which is a very important one, and which goes beyond the competence of the Barcelona Conference. I think the British proposal is a great improvement, and I ask the Conference to adopt it.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In my capacity as a delegate, and not as Rapporteur, I second the British proposal, which has the support of the Vice-President. I also prefer no mention to be made of coasting trade, particularly after the discussion which took place within the Committee, and which showed that variant opinions were held.

M. MATSUDA (Japan; speaking in French). — We ourselves have actually made a proposal to omit Article 7, and the Japanese Delegation is therefore in complete agreement with the British Delegation.

The CHAIRMAN (speaking in French). — We will reserve this article and consider it later, with a view to deciding upon the final text.

ARTICLE 8

We now pass to Article 8, which forms Chapter II.

Recommendations applicable only to Zones which are not Free.

In the levying of any customs, local octroi or consumption duties or of any incidental charges imposed on imports or exports through a port which is subject to the international regime, no difference shall be made on account of the flag of the vessel effecting the transport, whether such flag is that of the State exercising sovereignty or authority over the port, or any other flag.

In the absence of special circumstances justifying an exception on account of economic needs, the customs must not be higher than those imposed at the other customs frontiers of the State concerned on imports or exports under the general legislation of the State. All facilities accorded by such State over other land or water routes or in other ports to imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

M. LAMAN DE VRIES (Netherlands; speaking in French). — I should like to add in the second paragraph, after the word *customs*, the words *consumption duties*.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The idea was simply to avoid discriminating between frontiers and ports as regards customs dues; mention is made of frontiers of the State. Moreover, the same provision was adopted in the Waterways Convention.

The PRESIDENT (speaking in French). — Are there any other observations on Article 8?

I will put it to the vote.

Article 8 was adopted.

ARTICLE 9

We now come to Chapter III : *Special recommendations relating to free zones.*
I will read Article 9 :—

The facilities granted for the erection or use of warehouses as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise and all other duties of every description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

Sir Hubert LLEWELLYN SMITH (Great Britain; speaking in French). — I have no comments to make on the text of Article 9. But as regards the title of Chapter III, and also of Chapter II, I should like to point out that we are dealing here with *provisions*, and I should like this term to be used instead of the word *recommendations*.

The PRESIDENT (speaking in French). — Then we shall use the term *provisions*. If there are no further observations on Article 9 I will put it to the vote.

Article 9 was adopted.

ARTICLE 10

I will read Article 10 :—

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is placed may, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

M. MATSUDA (Japan; speaking in French). — I wish to repeat in connection with Article 10 that I agree with the text of the New Article proposed by the Delegate of Great Britain on the subject of coasting trade.

The PRESIDENT (speaking in French). — In that case we should omit Articles 7 and 10, and substitute for them an article which would be inserted before Article 14, and would be drafted as follows :—

The present stipulations do not affect the regime to be applied to national maritime coasting trade.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Today for the first time we have raised in plenary meeting the question of the omission of these two articles. Never during the course of our long discussion at Paris were we ever told that the question of maritime coasting trade would have to be excluded from the Resolution. Indeed, if I remember aright, the adoption of these two Articles, 7 and 10, was strongly urged. They were again discussed in Sub-Committee, and we were given excellent reasons justifying their adoption. When put to the vote in Sub-Committee, Article 10 was adopted by a majority, by the very delegates who are now, on the same day, proposing to omit it. At the meeting of the Committee which took place this afternoon, the question was again discussed, and this time the opposite result was produced; Article 10 was adopted in spite of the opinion of the previous majority of the Committee.

Today a new proposal arises; we are to omit the two articles because they affect the question of national coasting trade. That is a very difficult question. I will not dwell upon it at this late hour, but I should like to know why it is now proposed to omit these articles, and I ask those delegates who maintain that this omission is necessary to inform me of their reasons. I take this occasion to state very clearly that I will argue this question of national coasting trade and the proposed omission again when we consider international waterways.

The PRESIDENT (speaking in French). — What is your proposal?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I simply asked the reasons for which it is proposed to omit Articles 7 and 10. We should like to know why this question of coasting trade, after having been introduced in respect of waterways, has now to be excluded as regards ports. We consider that these changes, variations and discrepancies call for at least some explanation. The question is an important one, and as it is 9 o'clock in the evening I will ask the President to be good enough to postpone the continuation of the discussion until tomorrow.

The meeting adjourned at 9 p.m.

TWENTY-SEVENTH MEETING OF THE CONFERENCE

(Saturday, April 16th, 1921, at 6.15 p.m.)

DISCUSSION OF RECOMMENDATIONS (contd.) — ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO PORTS PLACED UNDER AN INTERNATIONAL REGIME

The meeting opened with M. Hanotaux, President, in the Chair.

DISCUSSION OF RECOMMENDATIONS (contd.)

The PRESIDENT (speaking in French). — We will resume the discussion on the regime relative to ports. We were held up yesterday by Articles 7 and 10. It was proposed to substitute for these articles a new text, as follows :

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

Does the Conference accept this text?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — At yesterday's meeting I begged the British Delegate to give us his reasons for asking for the omission of these two articles, which already exist in the *Green Book*. We discussed the subject at great length, both in Sub-Committee and in the Committee, which latter adopted the articles following an amendment by our Delegation. We cannot therefore agree to their omission without hearing detailed reasons. I therefore ask the British Delegate for an explanation, and reserve the right to speak after him.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In response to the request of the Delegate of the Serb-Croat-Slovene State, I would explain that the British proposal to omit Articles 7 and 10 and substitute for them an article stating that maritime coasting trade is excluded from the present Recommendations, was made, as I thought I explained yesterday, as a compromise, in order to arrive at unanimity and so save the time of the Conference, in view of the sharp difference of opinion which arose in Committee as regards the wording of these two articles. The Serb-Croat-Slovene Delegate is perfectly right in saying that these articles appeared originally in the *Green Book*, but as originally drafted their effect was intelligible and consistent. The effect was that a port of international concern should be regarded as an ordinary territorial port to which the national laws governing coasting trade, whatever they might be, would be applied, with one exception,—referring to the free zone of the port, which was to be regarded for this purpose as extra-territorial, and therefore not subject to the coasting trade laws. But as the result of an amendment moved and carried in Committee, this rule with regard to the free zone was completely reversed; this led to a result which I think cannot be regarded as consistent with the main object of the recommendations regarding the establishment of free zones. This object is to create free distribution-centres where traffic of all kinds is facilitated, through the absence of the restrictions and delays caused by customs and other national legislation and administration. I think it is obvious that the whole object is defeated if the ships which bring goods to these distribution-centres are debarred from taking part in their distribution to other ports of the territorial State. That being so, it seemed to us that two courses were

open. We could either ask the Conference to reverse the decision of the Committee and re-establish the *Green Book* text, or else we could exclude the whole subject of maritime coasting trade from these recommendations. I fear that the first alternative would probably not be unanimously adopted, and it is for this reason that I propose the second. I hope that this explanation will give the Serb-Croat-Slovene Delegate the information which he requires.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The aim of the proposal which I submitted to the Committee, and which it adopted, was to defend our rights as regards coasting trade by basing ourselves on the authority of the League of Nations or on some other authority. You will notice that the text contains the word *may*, which implies possibility; this does not mean that an invariable rule is to be established.

After the explanation given by the British Delegate, I willingly agree to the omission of these two articles, if no objection is raised by the delegations which voted for our amendment.

M. FERNANDEZ Y MEDINA (Uruguay; Rapporteur, speaking in French). — The discussion which took place in Committee, and the ensuing vote, showed that there was a deep-seated divergence of views amongst the various delegations on the subject of maritime coasting trade in the free zones of ports placed under an international regime. It is for this reason that, like the Delegate of Great Britain, I think it would be better to omit the question from our Recommendations, and, without prejudging this part of the future regulations concerning free zones, to leave each State free to decide whether coasting trade shall be free or not. For my part (I was speaking as a delegate and not as Rapporteur) I stated from the outset that I was in favour of freedom of coasting trade. I consider that the idea of free zones is based on a regime of freedom, and I think that it is not possible to assimilate free zones to a part of the national territory, thus giving to the territorial State the right of excluding other countries, interested in the development of the free zone, from the international trade which is based on this very system of zones. I therefore consider that the question of maritime coasting trade must be omitted from our Recommendations, and I ask the Conference to take a decision in this sense.

The PRESIDENT (speaking in French). — I think that complete agreement has been reached; M. Avramovitch has given his assent, for which I thank him. It is understood then that Articles 7 and 10 will be omitted, and that the following New Article will be substituted for them :

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

Has anyone any observations to make on this Article?

I put it to the vote.

The New Article replacing Articles 7 and 10 was adopted.

I will now read Article 9 (*formerly* 11).

ARTICLE 9 (*formerly* 11).

No duties or charges other than those referred to in Article 2 shall be levied on goods entering or leaving the free zone, whatever may be the foreign country from which they come or for which they are destined. A maximum statistical duty of 1 per mille *ad valorem* may, however, be imposed, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

Sir Cecil HURST (Chairman of Jurists' Committee; speaking in French). — The Jurists' Committee desires to point out to the Conference the confusion which might arise from the expression *relevé des mouvements du port*.

Does this refer merely to a record of vessels or to a record of the trade of the port? It would perhaps be preferable to substitute for the word *mouvement* the word *commerce*.

The jurists are unable to suggest a new word because they do not quite understand what was intended to be conveyed in the article, nor could they obtain any exact definition on the subject.

The PRESIDENT (speaking in French). — If we turn to the beginning of the article, which refers to goods entering or leaving the free zone, it would seem that what is meant here is goods. In French *mouvement* in ports is applied to vessels.

M. PIERRARD (Belgium; speaking in French). — Since at the end of the article mention is made of *ad valorem*, the reference is evidently to goods.

M. ORTUÑO (Spain; speaking in French). — In my opinion it would be simpler to say *le relevé du trafic du port.*

The PRESIDENT (speaking in French). — I think this is all the more desirable because the word *traffic* is used in English. I put the new Article 9 to the vote, with the changed text, *le relevé du trafic du port.*

The new Article 9 was adopted.

ARTICLES 10 TO 15

ARTICLE 10 (*formerly 12*).

The duties referred to in Article 7 (formerly 8) above may be levied under the conditions prescribed in the said Article upon goods despatched from the free zone at the time of their entry into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their leaving the territory of the State under whose sovereignty or authority the port is situated.

Article 10 was adopted.

ARTICLE 11 (*formerly 13*).

Persons, baggage and goods and also vessels, coaching and goods stock and other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State, if proceeding from or to the territory of any other State.

Article 11 was adopted.

The PRESIDENT (speaking in French). — We now come to Chapter IV : *Miscellaneous Provisions.* I will remind the Conference that the New Article substituted for the former Articles 7 and 10 should be placed under this heading.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — This New Article could be placed between the Articles formerly numbered 14 and 15.

ARTICLE 12 (*formerly 14*).

These provisions do not prescribe the rights and duties of belligerents and neutrals in time of war. They shall, however, continue in force in time of war so far as such rights and duties permit.

Article 12 was adopted.

ARTICLE 13 (*formerly* 7 and 10).

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

The PRESIDENT (speaking in French). — This Article has already been adopted.

ARTICLE 14 (*formerly* 15).

These provisions do not impose any obligations conflicting with the rights and duties of a State as Member of the League of Nations.

Article 14 was adopted.

ARTICLE 15 (*formerly 16*).

Any dispute between States as to the interpretation or application of these provisions which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order, however, that such disputes should be settled in a friendly way as far as possible, they shall, before resort is made to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, be submitted for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communication and transit. In urgent cases a preliminary opinion may be given recommending temporary measures intended in particular to restore the facilities for the free use of the post which existed before the act or occurrence which gave rise to the dispute.

Article 15 was adopted.

The PRESIDENT (speaking in French). — The Recommendations relative to Ports placed under an International Regime have now been voted article by article. We will now take a vote by roll-call on the Recommendations as a whole.

M. SIBILLE (France; speaking in French). — I have asked to speak in order to explain the reason for my vote. The Recommendations adopted by this Conference ought to be adopted by a large majority, if possible unanimously. I will therefore vote in favour of the Recommendations relative to Ports placed under an International Regime, but I wish to state that I only vote subject to the reservation contained at the beginning of the Preamble, which says... *while considering that the moment has not yet arrived* for the conclusion of a General *International Convention on the Regime of Ports.* I wish to state that I vote for these Recommendations subject to this reservation.

ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO PORTS PLACED UNDER AN INTERNATIONAL REGIME

The PRESIDENT (speaking in French). — I now put to the vote, by roll-call, the Recommendations as a whole.

Albania	Yes	Finland	Yes
Austria	Yes	France	Yes
Belgium	Yes	Great Britain	Yes
Bolivia	Yes	Greece	Yes
Brazil	Yes	Guatemala	Yes
Bulgaria	Yes	Haiti	Yes
Chile	Yes	Honduras	Yes
China	Yes	India	Yes
Colombia	Absent	Italy	Yes
Cuba	Yes	Japan	Yes
Czecho-Slovakia	Yes	Latvia	Yes
Denmark	Yes	Lithuania	Yes
Esthonia	Yes	Luxemburg	Absent

Netherlands	Yes	Roumania	Yes
Norway	Yes	Serbia	Abstention
Panama	Yes	Spain	Yes
Paraguay	Absent	Sweden	Yes
Persia	Yes	Switzerland	Yes
Poland	No	Uruguay	Yes
Portugal	Yes	Venezuela	Absent

The Recommendations relative to Ports placed under an International Regime were adopted as a whole by 34 votes to 1, with 1 abstention.

The meeting adjourned at 7 p.m.

PART V

TEXTS RELATING TO RAILWAYS AND PORTS

RAILWAYS

Sections I, II and III. — Texts discussed at the Commission of Enquiry on Freedom of Communications and Transit.

Section IV. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications and Transit, with attached Report *(Green Book)*.

Sections V and VI. — Texts discussed at the Barcelona Conference.

Section VII. — Text of *Recommendations relative to the International Regime of Railways* adopted by the Conference.

PORTS

Sections VIII and IX. — Texts discussed at the Commission of Enquiry on Freedom of Communications and Transit.

Section X. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications and Transit, with attached Report *(Green Book)*.

Sections XI and XII. — Texts discussed at the Barcelona Conference.

Section XIII. — Text of the *Resolution relative to the International Regime of Ports,* adopted by the Conference.

SECTION I

DRAFT CONVENTION
ON THE INTERNATIONAL REGIME OF RAILWAYS

(*Presented by the Secretary-General as a basis for discussion.*)

(October 1919.)

Article 1

On the territories of all States which adhere to the Conventions referred to in the present article, the transport of goods between any two points on lines open to general traffic within any one of these States shall be carried out with a single way-bill, if this can be done throughout over routes subject to the same obligation.

There shall be a special Convention to determine the conditions under which this transport shall take place, particularly as regards the through forwarding of goods, and transhipment when this operation is unavoidable.

There shall also be a special Convention to determine the measures necessary to assure the international transport of passengers and luggage over the same lines, under conditions of speed and comfort corresponding to the importance of each train service.

There shall be a special Convention to determine conditions of transport for goods, passengers and luggage, with a uniform consignment note for journeys comprising one or more sections by rail and one or more by sea served by one or more shipping lines designated by each State to participate in through combined transport.

These Conventions shall involve complete equality of charges for goods and passengers proceeding on the same journey in the same conditions, whatever their nationality, so that the benefits of any private agreement authorised by the legislation of a State shall be granted to whoever accepts the conditions of such agreement.

Article 2

It shall be the duty of the Permanent Communication and Transit Committee of the League of Nations :

1) To prepare the international agreements referred to in the preceding article, as also any modification of these agreements, the necessity for which may become apparent;

2) To apprise all the Parties to these agreements of any modifications in the list of those railway and shipping lines which are subject to them, and also of any difficulties by which traffic on any of such lines may be temporarily impeded;

3) To conciliate or settle any disputes arising between the administrative bodies which are parties to these agreements, on the subject of the application of their terms.

Whenever the Conventions referred to in the preceding Article involve the creation of International Bureaux, these shall be placed under the direction of the Permanent Communications and Transit Committee, which may delegate to them all or part of the above-mentioned functions.

Article 3

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties recognise as highly desirable the establishment, over the railways placed under their sovereignty or authority, of international tariffs which will facilitate international traffic as far as possible, both by their rates and the method of their application. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

Article 4

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties recognise as highly desirable the establishment, over the railways in the territories placed under their sovereignty or authority, of such services with through booking facilities for passengers and their luggage as may be called for by any one of the other High Contracting Parties, in order to assure railway communications between that Power and another High Contracting Party. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

Article 5

The High Contracting Parties recognise as highly desirable all measures of a technical nature which will facilitate, over the railways in the territories placed under the sovereignty or authority of any one of the High Contracting Parties, the use of the rolling-stock of adjacent High Contracting Parties. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

Article 6

When a State is unwilling to execute the works or take the measures necessary for the proper carrying out on its territory of an international service, basing its claim on the fact that the cost is disproportionate to the amount of its interest in such service, the Permanent Communications and Transit Committee of the League of Nations may, at the request of any one of the States concerned, examine the question of the equitable distribution of the cost between these States, and study means of meeting it.

Any State refusing to bear the cost may not oppose the carrying out of the works or measures in question, if the Permanent Communications and Transit Committee recognises the necessity, and if the other States concerned undertake to bear the whole of the cost, including the making good of all damages occasioned by the works.

Article 7

In the absence of any direct agreement between the parties concerned, all disputes as to the interpretation and application of the present Convention shall be brought before the Permanent Communications and Transit Committee, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular for the utilisation of railways, and to restore the facilities which existed before the act or occurence which gave rise to the dispute. The present article does not prevent the settlement of disputes by arbitration or any other means, in virtue of special Conventions between the States concerned.

SECTION II

DRAFT CONVENTION
ON THE INTERNATIONAL REGIME OF RAILWAYS

(Presented by the Secretary-General for discussion in second reading.)

(June 3rd, 1920.)

Preamble

The High Contracting Parties, being desirous of applying the principle of freedom of communications, in conformity with Article 23 of the Covenant, to the railways under their sovereignty or authority, and recognising that in virtue of this principle any one of the High Contracting Parties is entitled, on the railways under the sovereignty or authority of any other High Contracting Party, to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, are agreed upon the following provisions to this end.

Article 1

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures, more particularly as regards through forwarding, transhipment when this operation is unavoidable, and the establishment, rates and method of application of tariffs which will facilitate as far as possible the international transport of goods, mails and postal parcels, and wagons, over the railways placed under their sovereignty or authority.

Article 2

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures, comprising in particular the establishment of services with through booking facilities, which will facilitate the international transport of passengers and luggage over the railways placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service.

Article 3

The High Contracting Parties undertake to recognise as highly desirable the adoption, over the railways placed under the sovereignty or authority of any one of the High Contracting Parties, of all measures of a technical nature, which will facilitate the utilisation of the rolling-stock of adjacent High Contracting Parties.

Article 4

In the absence of relevant existing conventions, special Conventions shall provide for the application of the principles enunciated in the preceding articles. These Conventions shall include as far as possible provisions applicable to combined transport

by rail and water, including sea-journeys. They shall comprise no distinction whatever, in connection with facilities or tariffs, between goods or passengers proceeding on the same journey, and in the same conditions, based on the nationality of persons or on the commercial origin or ownership of goods, so that the benefits of any private agreement authorised by the legislation of a State shall be granted to whoever accepts the conditions of such agreement. Nevertheless, as regards passengers, this stipulation must not be construed as allowing the subjects of one of the High Contracting Parties to claim the benefit of special privileges accorded by another High Contracting Party to certain classes only of its own subjects over the railways placed under its sovereignty or authority.

Article 5

In the absence of existing Conventions, and until such time as the conventions referred to in Article 4 have been concluded, the principle of equality defined in the aforementioned shall be considered as immediately binding upon each of the High Contracting Parties.

Article 6

In those cases in which conventions, referred to in Article 4, involve the creation of international bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

Article 7

All disputes between States as to the interpretation and application of the conventions referred to in Article 4, shall, in the absence of any special procedure laid down in the present Conventions, be brought before the Permanent Communications and Transit Committee, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

Article 8

When one of the High Contracting Parties is unwilling to execute works necessary for the proper carrying out of an international railway transport service on the territory placed under its sovereingty or authority basing its claim on the fact that the cost is disproportionate to the amount of its interest in such service, the Permanent Communications and Transit Committee, may, at the request of any one of the States concerned examine the question of the equitable distribution of the cost between the said States, and propose means of meeting it.

SECTION III

DRAFT CONVENTION
ON THE INTERNATIONAL REGIME OF RAILWAYS

(*Presented by the Secretary-General for discussion in third reading.*)

(June 9th, 1920.)

Preamble

The High Contracting Parties, being desirous of applying the principle of freedom of communications, in conformity with Article 23 of the Covenant, to the railways under their sovereignty or authority, and recognising that in virtue of this principle any one of the High Contracting Parties is entitled, on the railways under the sovereignty or authority of any other High Contracting Party, to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, are agreed upon the following provisions to this end :

Article 1

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

Article 2

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

Article 3

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

Article 4

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These

Conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea-journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation, however, must not be construed as preventing the establishment of local tariffs on a different basis from import and export tariffs.

The afore-mentioned Conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors of goods or mails and postal parcels, subjects of any one of the High Contracting Parties, shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

Article 5

In the absence of existing Conventions, and until such time as the Conventions referred to in Article 4 have been concluded, the provisions defined in the afore-mentioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

Article 6

In those cases in which (existing or) future Conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

Article 7

In the absence of any direct agreement between the parties concerned, all disputes between States as to the interpretation and application of the existing or future Conventions referred to in Article 4, and for the settlement of which special procedure is not laid down in these Conventions, shall be brought before the Permanent Communications and Transit Committee, and. in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

These disputes shall, in cases of urgency, be accorded as accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the utilisation of railways which existed before the act or occurrence which gave rise to the dispute. The same procedure shall be followed in all disputes between States as to the interpretation or application of Article 5 of the present Convention.

SECTION IV

DRAFT CONVENTION
ON THE INTERNATIONAL REGIME OF RAILWAYS

(*Text prepared by the Commission of Enquiry and submitted to the Conference.*)

The General Communications and Transit Conference of the League of Nations,

Assembled at... by...

Having decided to adopt certain proposals relating to the International Regime of Railways, constituting the... item of their agenda, and

Having decided that these proposals should be drawn up in the form of a draft international convention,

Adopts the following Draft Convention with a view to its ratification by the Members of the League of Nations, as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present Draft Convention being known hereafter as High Contracting Parties.

Preamble

Principles of the Convention.

The High Contracting Parties being desirous of applying the principle of Freedom of Communications, in conformity with Article 23 (*e*) of the Covenant of the League of Nations, to the railways under their sovereignty or authority, and recognising that in virtue of this principle any one of the High Contracting Parties is entitled, on the railways under the sovereignty or authority of any other High Contracting Party, to all reasonable facilities for promoting and encouraging the flow of international traffi to or from its territory, are agreed upon the following provisions to this end :

Article 1

Treatment of Goods, Mails and Postal Parcels.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

Article 2

Treatment of Passengers.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage

over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

Article 3

Rolling-stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

Article 4

Special Conventions.

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation, however, must not be construed as either preventing the establishment of local tariffs on a different basis from import and export tariffs, or as affecting in any way the question of combined rail and sea tariffs.

The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

Article 5

Provisions immediately compulsory.

In the absence of existing conventions, and until such time as the conventions referred to in Article 4 have been concluded, the provisions defined in the aforementioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

Article 6

Relations between the Permanent Committee and the International Bureaux.

In those cases in which [existing or] (1) future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

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(1) The Conference is recommended to include the words in brackets, with a view to obtaining the consent of the Parties, through the medium of this convention, in cases where this is necessitated by the terms of Article 24 of the Covenant.

Article 7

Application of the Conventions in Time of War.

The stipulations contained both in the present Convention and in the conventions referred to in Article 4 shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

Article 8

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

Neither the present Convention nor the conventions referred to in Article 4 are to be understood as imposing on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

Article 9

Relations with States not adhering to the present Convention.

Each of the High Contracting Parties undertakes not to accord to a State which does not adhere to the present Convention any preference, either by agreement or understanding, with regard to the utilisation of railways, which would be contrary to the terms of Articles 4 and 5 as between High Contracting Parties.

Article 10

Relationship of the present Convention to the Peace Treaties.

The present Convention does not prejudice the application of the Treaties of Versailles, Saint-Germain, Neuilly, etc. between the Powers signatory to those Treaties.

Article 11

Disputes.

In the absence of any direct agreement between the parties concerned, all disputes between States as to the interpretation and application of the existing or future conventions referred to in Article 4, and for the settlement of which special procedure is not laid down in the conventions, shall be brought before the Permanent Communications bnd Transit Committee; and, in case of appeal within such period as may be prescribed, aefore the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations, dated..., and in the Scheme for the Organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the utilisation of railways which existed before the act or occurrence which gave rise to the dispute.

The same procedure shall be followed in all disputes between States as to the interpretation or application of Articles 5 and 9 of the present Convention.

Article 12

Consequences of Non-execution.

Should any one of the High Contracting Parties fail to comply with the findings of the Permanent Communications and Transit Committee, or, if an appeal has been made, with the judgment of the Permanent Court of International Justice, any High Contracting Party may bring the matter before the Permanent Court of International Justice in order to obtain from it a declaration as to the measures which each of the High Contracting Parties may be entitled to take.

Article 13

Ratification.

The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention, and shall register them.

Article 14

Notification.

As soon as the ratifications of three of the Members or Powers referred to in the preceding Article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding Article.

Article 15

Coming into force of the Convention.

The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

Article 16

Date of Application of the Convention.

Each Member which ratifies this Convention agrees to bring its provisions into operation not later than 1st July, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations, agrees to bring its provisions into operation not later than 18 months after the date of the said communication, and to take such action as may be necessary to make those provisions effective.

Article 17

Denunciation.

Any Member or Power which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention comes into force,

by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

Article 18

Revision.

At least once in ten years the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

Article 19

Official Texts

The French and English texts of this Convention shall both be authentic.

ANNEX TO SECTION IV

REPORT ON THE DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF RAILWAYS [1]

The Draft Convention on Freedom of Transit already deals with certain questions which affect, especially in such matters as the charges to be levied, the method of utilising and working, and in general, the international regime of railways. But from the nature of that Convention it can only deal with such questions indirectly, without entering into the details of execution which concern any particular method of transport such as railways or navigation, and moreover, can only envisage them from the point of view of the needs of transit, without, therefore, taking account of transports other than those in transit.

Freedom of Communications, however, as understood in Article 23 (*e*) of the Covenant, is not confined to Freedom of Transit. If, therefore, the first General Communications Conference is resolved from the outset to define the duties incumbent upon the Members of the League in virtue of this principle of freedom of communications, it cannot omit to deal specially with the problem of international railway communications, at any rate in its broad lines. Freedom of Transit itself would be meaningless if, after having been afforded legal guarantees on those railways over which the various States exercise any degree of control or action, it could not be effectively exercised owing to the general conditions of working and utilisation of these lines. Moreover, apart from the question of transit, the economic solidarity of nations, which to-day is more necessary than ever before, requires that every State should find on the railways of other States those facilities which are essential to its continued existence.

Such are the principles inspiring the Draft Convention on the International Regime of Railways, which was adopted unanimously by the Commission of Enquiry on Freedom of Communications and Transit, with a view to its submission to the General

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(1) This Report forms part of the preliminary documents for the General Communications and the Transit Conference (*Green Book*).

Conference. In its pages are contained the elements of the line of action to be followed with regard to railways by the general communications organisation of the League of Nations, and of the new and specialised code gradually to be built up as a result of progressive understanding between States, and of that slow but sure fusion of their *inter se* agreements, which is so eminently desirable.

It has not been considered possible to go further. The conditions of working and utilisation of railways in different countries at the present time vary so enormously, both from an economic and a technical point of view, and are so intimately bound up, in many different ways, with the interior administration and the commercial organisation of different countries, that any immediate attempt at codifying in universal form and without regard to the need for gradual transition, the obligations which in this domain are suggested to every country by the new spirit of international collaboration animating the Covenant, must needs be premature and in all probability end in disappointment. The General Convention only gives guiding principles; it voices the common aim, whilst leaving to the special conventions to be concluded either between the various States themselves or between the railway companies of different countries, whichever may be the more convenient procedure, the task of achieving that aim, with due regard in every case to particular circumstances and to different local conditions. Doubtless, the earlier conventions will only be applicable to certain clearly defined geographical areas, but it is not unlikely that through force of circumstances they may gradually tend to be combined, with the result that out of tentative beginnings there will ultimately be developed an equivalent to General Conventions such as could not have been realised in their complete form at the outset.

But the present Draft Convention has not contented itself with providing for future special conventions and laying down the principles they are to contain; it has contribued the necessary framework by placing at the disposal of the Parties a general organisation, under the auspices of the League of Nations, which is intended to smooth the way for the drawing up of the agreements in question and to follow up their application. The mere fact of their constituting annexes, as it were, to the present Convention, links them up with the general programme imposed by Article 23 (*e*) of the Covenant, and, if desired by the Contracting Parties, the same procedure may be used for preparing and concluding them as that adopted for the General Conventions, through the instrumentality of the Permanent Committee and the General Conference, either in plenary or in partial session, without such a procedure being considered in any way as compulsory. In any case, the provisions which are similar to those contained in the other Conventions, and which concern the settlement of disputes, revision, denunciation, time of war, etc., will assure for the execution of the Draft Convention on the international Regime of Railways, and of its virtual annexes the special conventions, the same guarantees as are afforded to the Conventions on Freedom of Transit and on the International Regime of Waterways. These provisions apply automatically to the future special conventions with the same force as to the General Convention itself, and, consequently, there will be no need for them to be repeated in each of the special conventions. It is hardly necessary to emphasise the importance of this arrangement, whereby every dispute between States relative to the interpretation or application of these conven ions is to be submitted to compulsory arbitration.

In cases where there already exist between certain States special conventions similar to those provided for above, the *status quo* is to be maintained, and the relations between these previous agreements and both the General Convention and the central organisation of the League of Nations are to be considered as identical with those outlined above. The League of Nations will not succeed in its mission by making a clean sweep of all that has gone before, but only, on the contrary, by setting its seal upon every effort which has already been made towards the cause of international co-operation and the achievement of the task now set before the League. It should lend its support to the maintenance, in their integrity, both as regards their methods and their field of activity, of any existing organisations of proven worth, such as that created by the Convention of Berne of 14th October, 1890. In these cases it is only proposed that the relations provided for in Article 24 of the Covenant should exist between such bodies and the League of Nations in such a way as to leave entirely free their interior working.

Lastly, there is one point in connection with which certain definite obligations are established by the present Draft General Convention before the coming into force of the special conventions. It has been considered feasible and desirable to prohibit at once by international law all differential treatment and "unjust preferences" based on the nationality of passengers, the origin (1) of goods, the flag of vessels, etc., such as have already been gradually abolished by the internal legislation of the majority of countries, in the course of the evolution of railway practice. All railway tariffs of which the application would entail such differential treatment are considered as incompatible with the principle of Freedom of Communications which by the terms of Article 23 (*e*) of the Covenant is accorded without distinction to all. The same article of the Convention also reproduces a clause of the Berne Convention as to the prohibition of all private agreements outside of the scheduled tariffs, subject to rebates which may be granted provided they are duly published and equally applicable to all under the same terms and conditions; it applies thus generally the safeguards hitherto only in force within the territories of the Contracting Parties to the Berne Convention. It should be noted that the subject of combined rail and sea tariffs is entirely omitted from the Convention.

As stated above, the Draft Convention on the International Regime of Railways was adopted unanimously without reservation upon any point. In the course of discussion prominence was given to the connection between general railway practice on the one hand, and the economic and railway policy of different States on the other, without, however, affecting the points agreed to for inclusion in the body of the Convention. A summary of these discussions may be of interest to the Conference, particularly inasmuch as they reveal certain points of view corresponding to those put forward in connection with Article 4 of the Convention on Freedom of Transit.

The Italian delegation declared its opposition to any formula which in their opinion would imply the strict prohibition both of any distinction between interior railway tariffs and international tariffs, and also of any protection afforded to national industries by means of railway tariff facilities. This delegation considered, firstly, that it was not within the competence of a technical Conference to express an opinion, even in the form of a recommendation only, on a question which concerned the general policy of the different States; and secondly, as touching the principle, that if, on the one hand, Italy had always accorded and would continue to accord to international traffic the use of the ordinary interior tariffs of the country, and even of reduced transit tariffs, yet, on the other hand, as a result of its geographical configuration and situation, Italy had been obliged to come to the assistance of certain industries by means of reduced railway tariffs, as being the method least open to abuse; the transport of Sicilian and South Italian fruit and "earlies" to the northern frontiers enjoyed the use of such tariffs, which are maintained below the actual cost of transport.

The Rumanian delegation, supported by the Serb-Croat-Slovene and Polish delegations, declared itself in agreement with the views expressed by the Italian delegation, and laid emphasis on the importance of this point for the new States. It agreed that no distinction should be made dependent upon the starting-point and nationality of passengers and goods, provided that there resulted no interference with the free development of the industries and interior trade of the country in which the transport was effected. Every country should be at liberty to fix its import and export tariffs, thus affording the necessary protection for its home interests. By no other means was it possible for the small newly created States, in which railways and navigation were State services established at the cost of the taxpayer, and not concessions to joint stock companies, to create home industries and develop their trade untrammelled by foreign competition. According to this delegation, the intention of Article 23 (*e*) of the Covenant was precisely this emancipation and development of every country, including the smaller States, by proclaiming, side by side with the principle of freedom of transit, that of equitable treatment for commerce.

The French delegation, which was supported by the Belgian, British, Dutch, Greek, Japanese, Portuguese and Spanish delegations, replied recalling its opinion that the policy of protection or of free trade between States ought to be carried out exclusively by means of customs tariffs and direct subsidies, and not by means of transport tariffs.

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(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 287.

The sole result of the latter practice, which must be clearly distinguished from the usual differences between import, export and transit tariffs on purely commercial grounds, would be to interfere with the natural working of transport undertakings, to vitiate indirectly customs regimes, and to disturb the application of commercial treaties.

The Belgian delegation added that in its view considerable advantages would have been obtained by basing the railway convention upon a definite undertaking by every country to purge its railway policy of all protectionist factors, while allowing full liberty of commercial competition between various lines.

The Czecho-Slovak delegation, whilst adhering to the principles and point of view expressed by the French, etc. delegations, considered that, in face of the present period of transition, the reservations formulated by the Italian delegation were indispensable.

The Commission recognised that the question was not one which for the present could be usefully dealt with in a General Convention put forward for immediate adoption. It was persuaded that the different opinions expressed would tend gradually in the future to coincide, and that the international organisation set up for dealing with communications would little by little, as it came into play, tend to lessen differences now existing between the various States as regards both their theories and their actual policies. In this belief, the Commission decided merely to take official note of the various attitudes and to transmit them quite impartially to the permanent Organisation of the League of Nations.

Finally, the Commission decided to bring to the notice of the General Conference a proposal put forward by the British delegation in connection with the discussion of the Railway Convention. This proposal, which was regarded by the British delegation as an extension to Article 4 of the Draft, relates to combined rail and sea tariffs. Time was lacking at the meetings to embark upon the study of the proposed text, of which, however, a copy is here given for purposes of information :

"On the same route, in the same direction, between the same points, and in the same conditions of traffic, the railway portion of any combined tariff shall always be the same, whatever the flag or ownership of the vessel which has been or is to be employed for conveying the traffic."

A Draft Resolution upon railways was likewise put forward by the Greek delegation. It included, in addition to the provisions and general principles contained in the Draft Convention under discussion, certain detailed provisions of a practical and, in some cases, of a merely transitory character, intended to serve as a sort of standard regulations for the use of railway administrations establishing services of international concern.

The Czecho-Slovak delegation, after making a statement on the existing condition of affairs with regard to international traffic, seconded the Greek proposal. They joined in the view that it would be preferable for the Convention, which would in all probability eventually take the place of certain provisions in the Treaties of Peace, to contain more detailed clauses concerning, in particular, the enlargement of the sphere of the Berne Convention, the unification of internal carrier's law, the conclusion of agreements as to exchange of rolling-stock, and the standardisation of the structure of tariffs.

The Commission considered that this special draft contained certain detailed provisions which could not be applied universally and which, moreover, prejudiced in advance the measures to be laid down at the time of the drawing up of special conventions in the future. It accordingly decided to append the text of the proposal to its Minutes, and to communicate it, if a suitable occasion arose, to the States and bodies concerned.

SECTION V

DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF RAILWAYS

(*Text prepared at Barcelona by the Committee on Railways.*)

Preamble

(Text of Preamble Reserved.)

Article 1

Without prejudice to the Provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, subject to the same obligation, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of international tariffs and the method of their application.

Article 2

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities and without change of carriage, as well as through luggage registration tickets, subject as far as possible to the same obligation.

Article 3

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

It is clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.

Article 4

In the absence of existing Conventions, special Conventions shall be concluded to give effect as far as possible to the provisions laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

Article 5

The concession of transport facilities or the establishment of tariffs and their adoption and application as regards passengers, subjects of any one of the participating

States or goods coming from or proceeding to any one of the participating States, over the same throughout route, in the same direction and in the same conditions, shall not depend either upon the nationality of the passengers or upon the ownership or commercial origin of the goods, or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport rates shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more passengers or to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the existence and establishment of different tariffs for internal, import, export or transit traffic, having regard to the traffic conditions and to commercial competition between transport routes, nor does it affect the question of combined rail and sea tariffs.

Article 6

Without prejudice to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable, in cases in which existing Conventions or future Conventions referred to in Article 5 involve the creation of international bureaux, that these bureaux should exchange directly with the League of Nations any useful information relating to the exercise of their functions and submit to it an annual report.

Article 6*a*

Exceptions may be made in special cases to the terms of the preceding articles, in virtue of special or general measures which one of the High Contracting Parties may be obliged to take in the case of emergency affecting safety of the State or the vital interests of the country, it being understood that the principle of freedom of communications shall be observed as far as possible.

(Articles 7 to 19 referred to Drafting Committee.)

SECTION VI

DRAFT RECOMMENDATIONS RELATIVE TO THE INTERNATIONAL REGIME OF RAILWAYS

(Text prepared, on instructions given by the Conference, by the Drafting Committee in the form of Recommendations based on the text of the Draft Convention prepared by the Committee on Railways.)

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of Communications should be applied in conformity with Article 23 (*e*) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transhipment, when this operation cannot be avoided;

The form in which international tariffs are to be established, and the conditions of their application.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. Those measures are excluded which would involve modifications in the essential characteristics of a railway system or of rolling-stock.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing as far as possible for the application of these principles as between groups of contiguous territories.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application

as regards passengers who are nationals of any one of these States, or as regards goods having as their origin or destination any one of these States, do not depend, over one and the same throughout route in the same direction and in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods or on the flag or ownership of the vessels employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published, any private agreement having as its object the granting of rebates to one or several passengers or to one or several consignors or consignees should be expressly forbidden and considered null and void. Rebates are granted, however, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not form any hindrance to the existence and the establishment of different tariffs for internal, import, export or transit traffic based on varying conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

6. That, without prejudice to the provisions of Article 24 of the Covenant, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

7. That in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

SECTION VII

RECOMMENDATIONS RELATIVE TO THE INTERNATIONAL REGIME OF RAILWAYS

(*Text adopted by the Conference.*)

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of communications should be applied in conformity with Article 23 (*e*) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transhipment, when this operation cannot be avoided;

The form in which international tariffs are to be established, and the conditions of their application.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. These measures do not include those which would involve modifications in the essential characteristics of a railway system or of rolling-stock.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing for the application of these principles as between groups of contiguous territories.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods

coming from or proceeding to any one of these States, do not depend in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods, or on the flag or ownership of the vessels, employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published. Any private agreement having as its object the granting of rebates to one or several passengers, or to one or several consignors or consignees, should be expressly forbidden and considered null and void. Rebates may, however, be granted, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not prevent the existence and the establishment of different tariffs for internal, import, export or transit traffic, based on varying traffic conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

6. That, without prejudice to the provisions of Article 24 of the Covenant of the League of Nations, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

7. The Conference recognises that in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION VIII

DRAFT CONVENTION ON PORTS OF INTERNATIONAL CONCERN

(*Text based on notes on the deliberations of the Commission on the International Regime of Ports, Waterways and Railways of the Peace Conference, submitted by the Secretariat for information.*)

(October 1919.)

I

Ports of International Concern.

ARTICLE 1

The following ports shall be deemed of international concern and submitted to the regime defined by the present convention.

Ports with or without free zones, specified as such in international treaties or agreements to which the territorial or mandatory State concerned is a Contracting Party. In the absence of express stipulations to the contrary, included in such treaties or agreements, the adoption of this regime shall not imply any limitation of territorial sovereignty.

II

Freedom of Navigation.

ARTICLE 2

In a port of international concern, the subjects, goods and flags of all States belonging to the League of Nations shall be treated in every respect on a footing of perfect equality, no distinction being made between the subjects, goods and flags of various countries and those of the country in the territory of which the port of international concern is situated, and no exclusive privilege in the matter of navigation shall be accorded to companies or individuals. In particular the vessels of any one of the States belonging to the League of Nations shall be entitled to transport goods of any description and passengers to or from such port under conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of perfect equality with national vessels as regards port and harbour facilities and charges of every description including facilities of stationing, loading, and unloading, and of duties and charges of tonnage, harbour, pilotage, lighthouse, quarantine and all analogous duties and charges of whatsoever nature, levied in the name of or for the profit of the Government, public functionaries, private individuals, corporations or establishments of every kind.

In the event of the territorial State in which the port is situated granting a preferential regime to any State, this regime shall be extended immediately and unconditionally to all the States belonging to the League of Nations.

There shall be no impediment to the movement of persons or vessels other than those arising from prescriptions concerning customs, police, sanitation, emigration and immigration, and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

Article 3

The State in the territory of which a port of international concern is situated may, in so far as concerns the carrying on of coasting trade, assimilate this port to its other ports.

In the absence of any special Convention, this privilege shall not extend to the parts of the port of international concern which shall be declared free.

III

Duties and Charges.

Article 4

Dues [varying according to (the length of the journey) the nature of cargoes, and the operations carried out by ships during their stay in port] (1) may be levied, under the conditions of complete equality laid down in Article 2, on vessels using the port of international concern or the approaches thereto. They shall be reasonable and shall be devoted solely to cover the expenses of the administration, upkeep and improvement of the port and of the approaches thereto, or to defray the expenses incurred in the interests of navigation. The schedule of such dues shall be calculated on the basis of these expenses, and shall be published in the port.

Charges may also be levied in the port, in accordance with published schedules, for the use of cranes, weighing-machines, elevators, quays, warehouses, etc.

Article 5

Sanitary charges and dues for services rendered, such as pilotage, shall be reasonable having regard to those prevailing either in ports of the country in whose territory the port is situated or in similar ports.

Article 6

Customs duties, local octroi dues or consumption taxes may be charged, in such parts of the port as are not declared free, by the country in whose territory the port is situated.

IV

Works.

Article 7

In the absence of any special arrangement relative to the execution of works for maintaining and improving a port of international concern, it shall be the duty of the territorial States to take suitable measures to remove any obstacle or danger to navigation and to secure facilities for movement of ships in the port.

Article 8

In the event of the territorial State undertaking works of such a nature as detrimentally to affect the usefulness of the port of international concern, the suspension or

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(1) The words between square brackets are those in regard to which a difference of opinion arose in the Commission on the International Regime of Ports, Waterways and Railways.

abandonment of such works may be enforced in the manner provided for in Article 15 below, due regard being had to the legitimate interests of the territorial State.

The lodging of an appeal to the League of Nations shall not be suspensive.

V

Free Zones

Article 9

A port of international concern, or certain specified parts of such ports, may be declared free.

Article 10

The facilities granted for the erection of warehouses, for packing and for unpacking goods shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the Free Zone shall be exempt from duty, whether of excise or of any other description, apart from the statistical duty provided for in Article 11 below. It shall be within the discretion of the territorial State to permit or to prohibit manufacture within the Free Zone. There shall be no discrimination in regard to any of the provisions of the present Article, either between persons belonging to different nationalities or between goods of different origin or destination.

Article 11

No duties or charges, other than those provided for in Articles 4 and 5 shall be levied on goods arriving in the Free Zone or departing therefrom, from whatever foreign country they come or for whatever foreign country they are destined, other than a statistical duty which shall not exceed 1 per mille *ad valorem*. The proceeds of this statistical duty shall be devoted exclusively to the maintenance of the statistical service dealing with statistics relating to the trade and shipping of the Free Zone.

Article 12

Import duties may be levied on goods leaving the Free Zone for consumption in the country in which the port is situated. Conversely, export duties may be levied on goods coming from such country and brought into the Free Zone. Import and export duties shall be levied on the same basis and at the same rates as similar duties levied at other Customs barriers in the country concerned. On the other hand, the territorial State shall not levy any import, export, or transit duties or other duties whatsoever on goods carried by land or water across its territory to or from the Free Zone from or to any other State.

The territorial State shall draw up the necessary regulations to secure and guarantee such free transit at least over all the railways and waterways in its territory normally giving access to the Free Zone.

VI

Administration of Ports of International Concern.

Article 13

Subject to stipulations to the contrary included in special treaties or agreements in which the territorial or mandatory State is a contracting party, the administration of a port of international concern shall be entrusted to the territorial or mandatory State concerned.

VII

Policing of the Port.

Article 14

Infringements of port regulations and infractions of laws and regulations shall be dealt with in accordance with the criminal law of the territorial State.

Differences of a civil or commercial character which may arise by reason of the utilisation of the port shall also be settled by the application of the laws of the territorial State.

Article 15

Differences which may arise between interested States with regard to the utilisation of the port and the application of the navigation and police regulations thereof shall be settled in accordance with the conditions laid down by the League of Nations.

Article 16

The provisions of the present Convention shall in no way affect the rights or duties in time of war of belligerents or neutrals.

COMMISSION
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AND TRANSIT

General Secretariat.

SECTION IX

RESOLUTION ON THE INTERNATIONAL REGIME OF PORTS

(*Presented by the Secretary-General for discussion in second reading.*)

(March 10th, 1921.)

Preamble.

The Commission of Enquiry on Freedom of Communications and Transit, not thinking it opportune to consider the conclusion now of a general international Convention on the regime of ports, feels, however, that the following dispositions should be applied (with the reservation of all other additional stipulations which might be necessitated in certain cases) to the ports or parts of ports with or without free zones, which may be placed under an international regime or under the authority of the League of Nations, it being thoroughly understood that such a regime can only be applied in consequence of a special act involving particularly the consent of the State under whose sovereignty or authority the said port may be placed.

I

Provisions applicable to all Ports or parts of Ports, with or without Free Zones, referred to in the Preamble.

ARTICLE 1

Freedom of Use of the Port and Equality of Treatment.

The subjects, goods and flags of all nations shall enjoy entire freedom of use of the port, and, in this connection and in all respects, especially in what concerns the facilities and charges of port and quay, of every sort, including facilities of docking, of loading and unloading, duties and charges in regard to tonnage, wharfage, piloting, lighthouse service, quarantine and all analogous duties and charges of every nature, levied in the name and for the benefit of the government, of public officials, of private contractors, of corporations or establishments of every kind, shall be treated on a footing of perfect equality, so that, in particular, no distinction shall be made between the subjects, goods and flags of the different States and those of the State under whose sovereignty or authority the port is placed.

There shall be no impediments to freedom of use of the port except those resulting from dispositions in regard to customs, police, sanitary provisions, emigration or immigration, as well as the import or export of prohibited merchandise. Such dispositions, of a reasonable and uniform character, shall not impede traffic without valid reason.

ARTICLE 2

Charges.

All charges imposed for the use of the port or for its access or the facilities offered in the port under the conditions of equality prescribed in the preceding article, shall be

reasonable in rate and in the method of collecting them, and shall be established in such a manner that the total amount of the charges shall not exceed in any case the expenses of the work of construction, improvement and maintenance or administration of the port and of its approaches, as well as the expenses incurred in the interest of the use of the port and its approaches, or with a view to the furnishing and developing of the facilities offered in the port.

All other charges than those made by virtue of the present article or of Articles 8, 11 and 12 below, shall be forbidden.

Article 3

Works of Maintenance and Improvement.

In default of a special organisation relative to the execution of the works of maintenance and improvement, the State under whose sovereignty or authority the port is placed shall be under obligation to take measures, as far as need be, to remove all impediments or dangers to navigation and to assure facility of operation of the vessels in the port.

Article 4

Works dangerous to the use of the Port.

The State under whose sovereignty or authority the Port is placed shall be under obligation, in al cases, not to undertake any works of a nature to injure the facilities for use of the port or its approaches.

Article 5

Administration.

Except in case of special stipulations, the State which exercises sovereignty or authority over the port shall be responsible for the administration of the port.

Article 6

Jurisdiction.

Except in case of special stipulations, the competent jurisdiction in administrative, civil, commercial or criminal matters shall be the jurisdiction of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only in Unfreed Zones of Ports or parts of Ports referred to in the Preamble (1).

Article 7

Coasting Trade.

The State under the sovereignty or authority of which the port is placed may, in so far as concerns the carrying on of small coasting trade, assimilate the port to its other ports.

Article 8

Customs Duties, etc.

All customs duties, local tolls or consumers' taxes imposed upon the import or export of merchandise through a port submitted to the international regime shall be

(1) The free zone may comprise a fraction or the whole of the port, or part of the port, subject to the international regime.

the same whether the flag of the vessel or boat which has effected or is to effect the transport be the flag of the State exercising sovereignty or authority over the Port or any other flag. Except in case of an exceptional cause reasonably justifying a derogation because of economic necessity, these duties shall be established upon the same basis and at the same rates as similar duties applied to the other customs frontiers of the interested State, and all facilities which may be granted by this State upon other land or water routes or in other ports for the import and export of merchandise shall also be granted to import or export through the port subject to the international regime.

III

Provisions applicable only to Free Zones of Ports or parts of Ports referred to in the Preamble (1).

Article 9

General Regime of Free Zones.

The facilities accorded for the construction or use of storehouses, as well as for the packing and unpacking of merchandise shall be in conformity with the commercial conditions of the time. Every product whose consumption shall have been authorised in the free zone shall be exempt from customs, excise or other duties of any nature except those provided for in Article 11 below. The State under whose sovereignty or authority the port is placed shall have the right to authorise or forbid power installations in the free zone.

Article 10

Coasting Trade.

Except in case of special stipulations, the State under whose sovereignty or authority the port is placed may not assimilate the free zone of the port to its other ports in matters concerning the exercise of small coasting trade.

Article 11

Statistics Tax.

No duty or tax, other than as provided in Article 2, shall be imposed on products upon their entrance into, or exit from, the free zone. Whatever the foreign country from which they come or for which they may be destined, except a statistics tax which shall not exceed similar duties levied in other ports of the State under whose sovereignty or authority the port subject to international regime is placed, and shall not exceed 1 per mille *ad valorem* in any case.

Art cle 12

Collection of Duties.

The duties provided for in Article 8 above may be collected, under the conditions fixed in the said article, upon merchandise coming from the free zone, at the time of its entry into the territory under whose sovereignty or authority the port is placed, as well as upon merchandise destined for the free zone, upon its departure from the territory of the State under whose sovereignty or authority the port is placed.

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(1) The free zone may comprise a fraction or the whole of the port or part of a port subject to the international regime.

Article 13

Transit.

The persons, merchandise, vessels, boats, cars, wagons or other means of transport, going to or from the free zone and crossing the territory of the State under whose sovereignty or authority the port is placed shall be considered in transit across the said State if going to or from the territory of any other State.

IV

Interpretation — Disputes.

Article 14

Application of the Present provisions in time of War.

These provisions do not in any wise detract from the rights and duties of belligerents and neutrals in time of war.

Article 15

Settlement of Differences.

All differences which may arise between interested States relative to the interpretation and application of these provisions, as well as, in a general way, all differences between interested States relative to the use of the port, shall be first brought before the International Commission entrusted with the administration of the port, should such a Commission have been instituted; if no International Commission exists, and also if the conclusions of this Commission should not be accepted by one of the States, each interested State may appeal to the Permanent Court of International Justice, under the conditions and according to the procedure which will be provided by the League of Nations.

All differences relative to the execution of works injurious to the facility of use of the port and its approaches, shall have the benefit of emergency procedure and may be the subject of a provisional finding and judgment of the International Commission and the Permanent Court of International Justice, which may prescribe the suspension or the immediate suppression of the said works, without prejudice to the final findings and judgment in regard to the basis of litigation.

SECTION X

RESOLUTION RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

(Text prepared by the Commission of Enquiry and submitted to the Conference.)

Preamble.

(See p. 231.) The Commission of Enquiry on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the regime of ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under the authority of the League of Nations, or under an international regime, it being clearly understood that such a regime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

I

Provisions applicable to all Ports or parts of Ports, with or without Free Zones, referred to in the Preamble.

Article 1

Freedom to use the Port and Equality of Treatment.

(See p. 231.) The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import, or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

Article 2

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in

Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8, 11 and 12, all other dues and charges are prohibited.

Article 3

Works of Upkeep and Improvement.

In the absence of any special organisation for carrying out works of upkeep and improvement, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

Article 4

Works dangerous to the use of the Port.

The State under whose sovereignty or authority the port is situated, shall be bound in every case not to undertake any works liable to prejudice the free use of the port or of the approaches thereto.

Article 5

Administration.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration. (See p. 231.)

Article 6

Jurisdiction.

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only in the Zones which are not free of Ports or parts of Ports referred to in the Preamble (1).

Article 7

National Coasting Trade.

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports. (See p. 231.)

Article 8

Customs Duties, etc.

All customs, local octroi or consumption duties levied on imports or exports through a port which is subject to the international régime must be uniform, irrespective of (See p. 232.)

(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to international régime.

whether the vessel which effected or is to effect the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, these duties shall be fixed on the same basis and at the same rates as similar duties applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international régime.

III

Provisions applicable only in Free Zones of Ports or parts of Ports referred to in the Preamble (1).

Article 9

General régime of Free Zones.

The facilities granted for the erection or use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from custom, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

Article 10

National Coasting Trade.

(See p. 232.) Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

Article 11

Statistical Duty.

(See p. 232.) No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty of 1 per mille *ad valorem*, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

Article 12

Collection of Duties.

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

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(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to international régime.

Article 13

Transit.

Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding from or to the territory of any other State. (See p. 232.)

IV

Interpretation—Disputes.

Article 14

Application of the present provisions in Time of War.

The present stipulations shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals. (See p. 232.)

Article 15

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its right and obligation as a Member of the League of Nations.

Article 16

Settlement of Disputes.

Disputes as to the interpretation and application of these provisions, as well as, in general, as to the use of the port, shall be brought in the first instance before the International Commission responsible for the administration of the port, where such a Commission exists; should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may bring the matter before the Permanent Communications and Transit Committee of the League of Nations and may ultimately appeal within such period as may be prescribed, to the Permanent Court of International Justice, under the conditions provided for in the Resolutions of the Assembly of the League of Nations, dated..., and in the scheme for the organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final conclusion, opinion and judgment on the basic cause of dispute, of pronouncing a provisional conclusion, opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

ANNEX TO SECTION X

REPORT ON THE DRAFT RESOLUTION RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS [1]

(Presented to the General Communications and Transit Conference by the Commission of Enquiry.)

By their Resolution dated 13th of February, the Council of the League of Nations invited the Commission of Enquiry on Freedom of Communications and Transit to draw up, with a view to its submission to the future Permanent Communications Organisation, that is to say, to the General Conference, a Convention on Ports similar to the Conventions on Freedom of Transit and on the International Regime of Waterways.

The Commission, whilst recognising that a Convention of this sort is undoubtedly desirable if the principle of Freedom of Communications is to be assured throughout its field of application, nevertheless decided to postpone the study of it, and merely to transmit to the General Conference a draft standard statute for certain ports for adoption by the Conference in the form of a "Recommendation" to the Members of the League of Nations.

The preparation of a Convention on Ports presents inherent difficulties. A General Convention on Ports, that is to say, one which could be applied to all national ports, and which the Belgian delegation even went so far as to propose, during the course of the discussion, appeared to the Commission to risk opening up, directly or indirectly, problems the solution of which, from the international standpoint, does not appear of immediate urgency or necessity. If, on the contrary, the Convention confined itself to laying down a regime for ports recognised as international, there would remain the task of identifying these, which could be done either by a geographical enumeration attached to the Convention in the form of an annex, or by a general definition. The former method would certainly have given rise to interminable discussions between States, and, as to a general definition, unless it were laid down simply that all ports situated on an international river system were to be considered as falling within the scope of the definition (a somewhat unnecessary provision, since, for these classes of ports, certain guarantees are already included in the Convention on the International Regime of Waterways) it seemed impossible to find a satisfactory criterium. Neither the volume of traffic, nor the fact of constituting the normal outlet of land-locked countries, nor the relative importance of national and foreign interests, as regards the commerce dealt with in the port, was capable of providing the basis of an accurate definition analogous to that given of international waterways.

The present "Recommendation" is intended to apply exclusively to ports placed under the authority of the League of Nations, and to ports placed in virtue of special acts under an international regime. It would be sufficient, in this case, for these acts to comprise or to make allusion to the whole or part of the proposed text; their drawing up would be thereby greatly facilitated. Further, the suggested regime has been conceived in such a way that it does not impose on any State obligations which cannot be reconciled with its national interests. It is to be hoped that when it has been put into practice in the ports referred to above, the Members of the League of Nations will be led gradually to apply it of their own accord to certain or all of their ports.

The following observations are suggested by the text which, broadly speaking, proposes to assure in international ports, whether "free" or otherwise, freedom in the use

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(1) This Report forms part of the preliminary documents for the General Communications and Transit Conference (*Green Book*).

of the port, equality of flags, and the avoidance of any fiscal or technical measures which would tend, by placing the international port in an unfavourable position *vis-à-vis* to competing national ports, directly to impair the freedom in the use of the port.

Preamble. — The "special acts" referred to in the preamble entail in particular the consent of the State under whose sovereignty or authority the port is situated. The expression "in particular" indicates that it must not be taken for granted that this consent is invariably sufficient of itself.

In the same way, if the sovereignty and authority under which the port is situated are shared by various States, it is for these States to agree among themselves, if necessary, as regards the application of the regime. The interpretation of the words "sovereignty and authority" is the same as in the Convention on Freedom of Transit (1).

Article 1. — Freedom to use the port must be understood as freedom of commercial use. The subjects of other nations are not thereby entitled to evade either police or special administrative regulations applicable to foreigners, or any regulations based on the constitution of the port, but the subjects, property and goods of every nation shall enjoy complete freedom as users of the port, of its equipment and, generally speaking, of everything appertaining to its use as a port.

The Commission was unanimous in considering it desirable that the flags of vessels belonging to any State not possessing a sea-coast should be recognised in the Ports referred to in the Resolution when they are registered in one place situated in its territory selected as the port of registration for such vessels, but did not consider it necessary to insert a special provision to this effect in the Resolution in view of the fact that a special Convention is proposed with the object of settling the question in a general manner (2).

The Swiss delegation had proposed that the ports referred to in the Resolution should likewise serve as places of registration for the vessels of the said States, but certain delegations being of opinion that this solution persented insuperable difficulties, the Commission decided not to deal with the question in the Resolution.

Equality between all nations does not in any way prevent special concessions being granted to companies or individuals of any particular nationality, providing that discrimination between such companies or individuals of different nationality be based on the same principle as the discrimination applied as between national companies and individuals where the same concessions are concerned.

The delegation of "authority" to a State, a port, or part of a port does not affect the equality prescribed in this article. In such a case, the concessionnaire State is responsible for the application of such equality in so far as the utilisation of the said port or part of a port is concerned.

Article 5. — The word "responsability" has been chosen in view of the cases in which the administration may not be exercised directly by a State, but through the medium of local organisations, concessionnaire companies, etc.

Article 7. — The Japanese delegation proposed the suppression of this article. On the other hand, the Polish delegation proposed that it be applied also to the cases referred to in Article 10 where the contrary solution had been the one adopted.

The Belgian, Dutch, Greek, Japanese and Portuguese delegations maintained that the principle of Freedom of Communications should involve the abolition, or at least the limitation of the right to reserve the national maritime coasting trade. The Chinese French, Italian, Polish, Roumanian, Serb-Croat-Slovene, and Spanish delegations, on the other hand, considered that a reservation of this kind in no wise restricted freedom of international communications, and was therefore admissible.

After discussion, the Commission decided that there was no occasion here to settle the general question, and that the discussion had proved that the exact meaning of

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(1) See *Verbatim Records and Text relating to the Convention on Freedom of Transit*, p. 286.

(2) See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern and the declaration recognising the right to a Flag of States having no Sea-Coast*, Part IV.

the words "national maritime coasting trade" was quite indefinite whenever these words were applied to the whole of a country, particularly when it is a question of a country whose shores are bathed by several seas or which possesses colonies, protectorates, etc. It was decided therefore to reserve completely the general principle and merely to express the wish that the study of the definition and the regime of the national maritime coasting trade should be undertaken with the least possible delay, with the assistance of the competent maritime authorities.

Article 8. — Article 8 is intended in particular to prevent a State exercising sovereignty or authority over an international port, and possessing national ports which are in competition with such port, from placing the international port in an unfavourable position by means of special customs or other duties. The "special circumstances reasonably justifying an exception on account of economic needs" invisage countries of a considerable compass, owning ports affected by a great diversity of economic conditions. For example, Russia allowed goods to enter ports on the Murman coast free of customs duties during certain months of the year because these ports were only accessible for a few months in the year; and it would be unreasonable to expect Russia to extend the same measures to an international port situated, for example, on the Black Sea.

The words "customs frontiers" of the States concerned constitute an exception to the principle laid down in the commentary on the Convention on Freedom of Transit, according to which a frontier referred to is the political frontier. Obviously the words "customs frontiers" will be replaced for each port by the geographical definition of its frontiers, and in those cases in which the country concerned exercises a protectorate, a mandate, etc., any difficulties whith may arise must be solved individually.

Article 10. — The State under whose sovereignty or authority the international port is situated may not reserve to itself the national maritime coasting trade between one of its national ports and the free zone of an international port.

This free zone will not infrequently be established in favour of traffic proceeding from or to a land-locked State, and from this point of view ought to be considered as ex-territorial. A similar principle underlies all the provisions applicable only to free zones, and designed to enable States not possessing access to the sea to find in such free zones normal facilities for their traffic in accordance with the commercial requirements for the time being.

Article 11. — Article 11, as also other articles in this section reproduce the regime for free zones operative in German ports.

Article 13. — Article 13, which relates to transit, applies the above-mentioned principle of commercial ex-territoriality ot the free zone.

Articles 14 and 16. — The commentary on these articles is identical with that on the corresponding articles (13, 14, 15 and 16) of the Convention on Freedom of Transit (1).

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(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 293 and 294.

SECTION XI

DRAFT RESOLUTION
RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

(Text proposed by the Sub-Committee on Ports and submitted to the Committee on Navigable Waterways.)

Preamble

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime, it being clearly understood that such a regime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

I

General Provisions.

Article 1

Freedom to use the Port and Equality of Treatment.

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects they shall be treated on a footing of absolute equality, particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

Article 2

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first

cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 3

Works of Upkeep.

In the absence of any special organisation for carrying out works of upkeep and improvement, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

Article 4

Works Dangerous to the Use of the Port.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to avoid obstructions or dangers to navigation.

Article 5

Administration.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 6

Jurisdiction.

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not free of Ports or parts of Ports referred to in the Preamble.

Article 7

National Coasting Trade.

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

Article 8

Customs Duties, etc.

All customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime must be uniform, irrespective of whether the vessel which effected or is to effect the transport

flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, the customs duties shall be those of the tariffs applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

III

Provisions applicable only to free Zones of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 9

General Regime of Free Zones.

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

ARTICLE 10

National Coasting Trade.

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

ARTICLE 11

Statistical Duty.

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem*.

ARTICLE 12

Collection of Duties.

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

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(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to the international regime.

Article 13

Transit.

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

IV

Interpretation — Disputes

Article 14

These stipulations do not prescribe the rights and obligations of belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit.

Article 15

These Regulations do not impose upon any Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 16

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

SECTION XII

DRAFT RECOMMENDATIONS RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

(Text prepared by the Committee on Navigable Waterways and submitted to the Conference.)

Preamble

The General Conference on Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the régime of ports, nevertheless recommends that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international régime, it being clearly understood that such a régime can only be applied in consequence of a special act involving, in particular, the consent of the State or States under whose sovereignty or authority the said port might be situated.

I

General Provisions.

Article 1

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

Article 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any danger or obstacle to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

Article 4

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid obstructions or dangers to navigation.

Article 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not free of Ports or parts of Ports referred to in the Preamble.

Article 7

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

Article 8

In the application of customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime, no difference shall be made by reason of the flag of the vessels effecting the transport, whether this flag is that of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances justifying an exception on account of economic needs, the customs duties may not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State. All the facilities which may be accorded on other land or water routes in other ports of the same State for the import and export of goods shall be equally accorded to imports and exports under the same conditions through the port subject to the international régime.

III

Provisions applicable only to Free Zones of Ports or parts of Ports referred to in the Preamble.

Article 9

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

Article 10

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

Article 11

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem*.

Article 12

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

Article 13

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

IV

Miscellaneous Provisions.

Article 14

These stipulations no not prescribe the rights and obligations of belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit.

Article 15

These stipulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 16

Any dispute as to the interpretation or application of these stipulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the contracting States undertake before resorting to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

SECTION XIII

RECOMMENDATIONS RELATIVE TO PORTS PLACED UNDER AN INTERNATIONAL REGIME

(*Text adopted by the Conference.*)

Preamble.

The General Conference on Communications and Transit, while considering that the moment has not yet arrived for the conclusion of a General International Convention on the Regime of Ports, is nevertheless of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime; it being well understood that such a regime can only be applied in consequence of a special act involving the consent of the State under whose sovereignty or authority the said port is situated.

I

General Provisions.

Article 1

The nationals, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated in this connection and in all respects on a footing of absolute equality, particularly as regards berthing, loading and unloading facilities and tonnage, harbour, pilotage, lighthouse, and quarantine dues, levied in the name and for the profit of the Government, public authorities, private individuals or companies, corporations or establishments of any kind. In particular, no distinction shall be made between the nationals, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions on the free use of the port other than those arising from stipulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such stipulations must be reasonable and uniform and must not impede traffic without good reason.

Article 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto or to expenditure incurred in the interests of the users of the port or its approaches. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 7 and 9, all other dues and charges are prohibited.

Article 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove as quickly as possible any danger or obstacle to navigation and to facilitate the operations of vessels in the port.

Article 4

The State under whose sovereignty or authority the port is placed may undertake all works for upkeep and improvement of the port or of its approaches. It shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid dangers or obstructions to navigation.

Article 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 6

Subject to any provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not Free.

Article 7

In the levying of any customs, local octroi or consumption duties or of any incidental charges imposed on imports or exports through a port which is subject to the international regime, no difference shall be made on account of the flag of the vessel effecting the transport, whether such flag is that of the State exercising sovereignty or authority over the port, or any other flag.

In the absence of special circumstances justifying an exception on account of economic needs, the customs duties must not be higher than those imposed at the other customs frontiers of the State concerned on imports or exports under the general legislation of the State. All facilities accorded by such State over other land or water routes or in other ports to imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

III

Special Provisions relating to Free Zones.

Article 8

The facilities granted for the erection or use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise,

and all other duties of every description, with the exception of the statistical duty provided for in Article 9 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

Article 9

No duties or charges other than those referred to in Article 2 shall be levied on goods entering or leaving the free zone, whatever may be the foreign country from which they come or for which they are destined. A maximum statistical duty of 1 per mille *ad valorem* may, however, be imposed, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

Article 10

The duties referred to in Article 7 above may be levied under the conditions prescribed in the said Article upon goods despatched from the free zone at the time of their entry into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their leaving the territory of the State under whose sovereignty or authority the port is situated.

Article 11

Persons, baggage and goods and also vessels, coaching and goods stock and other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State, if proceeding from or to the territory of any other State.

IV

Miscellaneous Provisions.

Article 12

The present stipulations do not affect the regime to be applied to national maritime coasting trade.

Article 13

These provisions do not prescribe the rights and duties of belligerents and neutrals in time of war. They shall, however, continue in force in time of war so far as such rights and duties permit.

Article 14

These provisions do not impose any obligations conflicting with the rights and duties of a State as Member of the League of Nations.

Article 15

Any dispute between States as to the interpretation or application of these provisions which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order, however, that such disputes should be settled in a friendly way as far as possible, they shall, before resort is made to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, be submitted for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communication and transit. In urgent cases a preliminary opinion may be given recommending temporary measures intended in particular to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

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